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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1994

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

[21 July 1995]

FOURTH PERIODIC REPORT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND: SUPPLEMENTARY REPORT ON THE DEPENDENT TERRITORIES: HONG KONG

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* The present document contains additional information submitted by the Government of the United Kingdom relating to Hong Kong. Section A (General profile), which is available for consultation in the secretariat, will be incorporated in the core document for the dependent territories (HRI/CORE/1/Add.61).

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Report on implementation of Parts I, II and III and article 40 of the Covenant

Article 1

Self-determination: Progress and development of democracy

1. The position with respect to the operation of the right of self-determination in relation to Hong Kong, having regard to its status as a territory the sovereignty over which will necessarily revert to the People's Republic of China on 1 July 1997, and having particular regard, in that context, to the provisions of the Joint Declaration and the Basic Law (see paras. 20 and 21 of sect. A (General profile)) has been explained in previous reports submitted under article 40 of the Covenant and in oral responses given during the Committee's examination of those reports. However, an important aspect of the matter is the measures taken, or being taken, to develop and establish a fully democratic system in Hong Kong. A comprehensive account of that process is given in paragraphs 308 to 340 below (under art. 25 of the Covenant).

Article 2

Impact of the BORO

2. A feature of the Hong Kong Bill of Rights Ordinance (BORO) is its general justiciability, that is, its applicability in every court and tribunal in Hong Kong. Since 8 June 1991, there have been a number of BORO challenges to the validity of legislative provisions at all court levels. Most have arisen in criminal proceedings and have concerned provisions which cast a burden of proof as to certain matters on the accused person.

3. Few of the challenged provisions have been authoritatively declared repealed by the BORO. Decisions by magistrates are not binding on other magistrates or on other courts. This is also true of decisions by judges of the District Court. This means that a decision by a magistrate or a district judge that a statutory provision is inconsistent with the BORO, and is therefore repealed to the extent of the inconsistency, does not, of itself, effect a change in the law, though the magistrate district judge will of course act in accordance with that decision in the case before him. However, such a decision by a superior court does have that effect. The following are provisions which have been declared repealed, wholly or partly, by the Court of Appeal (and, in case (d), the Privy Council):

(a) Sections 46 (c) and (d) (v), 47 (1) (c) and (d) and 47 (3), Dangerous Drugs Ordinance (mandatory presumption);

(b) Section 83XX (3) (a), Criminal Procedure Ordinance (denial of costs to a successful appellant ordered to be retried);

(c) Section 4 (4), Massage Establishments Ordinance (provision for increased penalty where relevant premises were previously the subject of successful prosecution);

(d) Section 30, Summary Offences Ordinance (failure to give satisfactory account of possession of goods suspected of having been stolen); and

(e) Section 17, Summary Offences Ordinance, second limb (being unable to give a satisfactory account of possession of offensive weapons).

4. So far as civil cases are concerned, the Ordinance has had less impact. This is partly because inter-citizen rights are excluded from the scope of the BORO, since the Ordinance binds only the Government and public authorities. It is also because of the costs involved in pursuing a BORO issue. In respect of the latter, measures will be taken to improve the availability of legal aid in BORO cases, as discussed in section A (General profile).

5. Apart from the courts, the BORO has also had an impact in the legislative arena. Since 1991, 29 amending ordinances or orders have been enacted with provisions intended to bring existing legislation in line with the BORO. A list of the ordinances involved is provided in appendix 4.

6. Other amendments are in the pipeline. Bills to amend the Public Order Ordinance, the Summary Offences Ordinance and the Places of Public Entertainment Ordinance are being scrutinized by the Legislative Council. Amendments to a number of ordinances and regulations, including to the Marriage Ordinance, the Mental Health Regulations and Prison Rules, are being prepared. Plans are being finalized in respect of other legislation, such as the Official Secrets Act and the Crimes Ordinance. Further details about the amendments made or proposed to these and other ordinances are provided below in relation to the relevant articles of the Covenant.

7. Apart from reviewing existing legislation in the light of the BORO, the Government of Hong Kong also takes particular care in drafting new legislation to ensure its consistency with the Covenant as applied to Hong Kong in accordance with the Letters Patent. The Human Rights Unit of the Attorney-General's Chambers is responsible for giving advice as to the consistency of proposed legislation with the Covenant before it is introduced into the Legislative Council for consideration and scrutiny. The Unit has also given extensive advice to various government departments and policy branches to ensure that their policies and practices comply with the BORO. In short, the BORO and article VII (5) of the Letters Patent have had a significant, though not radical, impact on the judicial, legislative and executive arms of the Government of Hong Kong and on the legal system generally.

8. The Law Reform Commission has completed reviews of existing legislation in a number of areas which have a bearing on human rights issues, including illegitimacy, police powers of arrest and detention, search and seizure, and the protection of privacy with respect to personal data. The Commission is currently examining laws relating to the protection of privacy with respect to intrusion and the interception of communications. Further details of these reviews and of the Hong Kong Government's response to the reports of the Commission are provided below in relation to the relevant articles of the Covenant.

Binding effect of the BORO

9. There have been suggestions that the scope of the BORO should be extended so as to provide for protection against infringement by individuals of the rights of other individuals. But the Hong Kong Government believes that it is more effective to address that problem by specific legislation in those areas where the need for a remedy for the infringement by one private individual of the civil liberties and rights of another is most commonly felt and where existing ordinary law does not provide an adequate remedy, that is to say, in the areas of discrimination and privacy. Developments relating to these two areas are discussed below: discrimination in connection with articles 3 and 26 of the Covenant and privacy in connection with article 17.

Human rights commission

10. Since the enactment of the BORO in 1991, there have been calls for the establishment of a human rights commission in Hong Kong to help promote and protect human rights. The Hong Kong Government carefully considered this proposal and concluded that it was not the best way forward in the particular circumstances of Hong Kong. Human rights in Hong Kong are founded on the rule of law, on a truly independent judiciary, and on an effective BORO. These safeguards provide a sound base for protecting human rights in Hong Kong. Instead of establishing an entirely new institution, with a wide-ranging but imprecise remit in the field of human rights, it would be more effective to rely on and to strengthen existing institutions by introducing practical measures to meet the concerns of the community. In pursuing this objective, the Hong Kong Government announced in July 1994 a series of specific measures to address those concerns. Those measures included:

(a) Increasing the resources for human rights education by creating a dedicated team and allocating $20 million for their work over the three years starting in 1995-1996 (see paras. 12-15 below);

(b) Introducing legislation against sex discrimination and establishing an Equal Opportunities Commission and seeking to extend the Convention on the Elimination of All Forms of Discrimination Against Women (see below under art. 3 of the Covenant);

(c) Providing the judiciary with the resources to enable it to reduce the waiting time for bringing cases to trial (see below under art. 14 of the Covenant);

(d) Establishing five additional judicial posts to help expedite the work of the courts (see below under art. 14);

(e) Improving the availability of legal aid in BORO cases (sect. A (General profile), paras. 41-46);

(f) Enhancing the independence of the legal aid administration (sect. A (General profile), paras. 41-46);

(g) Introducing legislation in the area of data protection (see below under art. 17 of the Covenant);

(h) Introducing a Code on Access to Information to enhance the transparency of government (see below under art. 19 of the Covenant);

(i) Extending the Convention on the Rights of the Child to Hong Kong (see below under art. 24 of the Covenant);

(j) Introducing legislation to prohibit discrimination on the ground of disability (see below under art. 26 of the Covenant).

11. Important work has also been done in other areas which have a positive impact on human rights protection in Hong Kong. These include:

(a) Measures to strengthen the role of the Commissioner for Administrative Complaints as an effective complaints channel (see paras. 18-19 below);

(b) Measures to improve the system of handling complaints against the police (see paras. 24-26 below);

(c) The establishment of the Administrative Appeal Board (see para. 27 below).

Human rights education

12. The Hong Kong Government has allocated an additional grant of $20 million for the three years starting in 1995-1996 to allow the Committee on the Promotion of Civic Education (see para. 48 of sect. A (General profile)) to expand its educational programmes on equal opportunities and human rights. The Committee has increased the sponsorship given to projects organized by community and voluntary organizations under the Community Participation Scheme. It will enhance electronic media publicity and increase funding for research projects and educational materials.

Human rights education in schools

13. Human rights topics form part of the formal curriculum. They are included in the syllabuses for such subjects as Economic and Public Affairs, Government and Public Affairs, Social Studies, History, Liberal Studies and Ethics and Religious Studies.

14. The Education Department is reviewing its "Guidelines on Civic Education". The first draft of the revised Guidelines will be ready by September 1995. Consultation with schools and concerned groups will be carried out between September and November 1995. The final draft should be available for endorsement by the Curriculum Development Council in early 1996 for implementation in the 1996-1997 school year.

15. The Education Department regularly organizes exhibitions, seminars and workshops to help teachers develop their understanding of civic education, of which the topic of human rights forms a part. A seminar specifically dedicated to the promotion of human rights education was organized in March 1994.

Human rights education for the Civil Service

16. Since the enactment of the BORO in 1991, training and education in connection with the BORO have been provided to legal officers, senior government officers and the operational staff of the disciplinary forces. Details are provided in appendix 5.

Human rights seminars for the judiciary

17. The concern has been expressed that members of the Hong Kong judiciary have failed to attend human rights seminars. This concern is not well-founded. There have been a number of such seminars in Hong Kong and elsewhere in recent years and these were well attended by members of the judiciary. Details are provided in appendix 6.

The complaints system

18. There has been concern that the Commissioner for Administrative Complaints (COMAC) (see paras. 36-37 of sect. A (General profile)) is not an effective mechanism for dealing with human rights violations by the Government. But COMAC is entirely independent of the Executive. His function is to investigate grievances arising from administrative decisions, acts, recommendations or omissions and is designed to supplement and strengthen existing channels for the redress of grievances, not to replace any of them. COMAC may indeed investigate complaints with human rights implications if they relate to maladministration. But he is not - and was never intended to be - a commissioner for human rights (see para. 10 above). And his jurisdiction does not extend to complaints against the Independent Commission Against Corruption (ICAC) or the police since both these bodies have independently monitored redress systems.

19. It has also been said that COMAC is effectively toothless as his recommendations are not binding on the Government. The reason why COMAC's recommendations cannot be made binding is that their implementation may require the provision of resources or the amendment of the law, for either of which purposes the Government must seek the approval of the Legislative Council, whose decision cannot be presumed or pre-empted. This situation is not unique to Hong Kong. Other jurisdictions also do not confer powers of enforcement on their ombudsmen. In any case, the Hong Kong Government takes COMAC's findings and recommendations most seriously; not least because it wishes the system to be seen to be successful. And, since COMAC may table his reports before the Legislative Council, the Government's performance in responding to COMAC's recommendations is under close public scrutiny.

Review of the power of the Independent Commission Against Corruption (ICAC) by the ICAC Review Committee

20. The Independent Commission Against Corruption (ICAC) is a Commission established by law to investigate suspected cases of corruption or related offences. Its officers have power to arrest suspects and to detain them for a limited period for the purpose of further inquiries. On 26 January 1994, the Legislative Council passed a resolution urging the Government to carry out a full review of the powers of the ICAC and its accountability in the exercise of these powers. Accordingly, in February 1994, the Hong Kong Government set up the ICAC Review Committee. The Committee presented its report to the Governor on 23 December 1994. The report made 76 conclusions and recommendations (see appendix 7). These seek to maintain the powers that the ICAC needs to be effective in the battle against corruption, to increase its accountability and transparency in the exercise of these powers, and to ensure that these powers are compatible with the BORO.

21. Many of the recommendations reflect concern for the BORO and transfer certain powers (of search and to obtain information) from the Commissioner of ICAC to the courts. They seek to achieve that by raising the threshold at which the powers can be invoked, and by providing further routes of appeal to the courts against the use of the powers under the Prevention of Bribery Ordinance (PBO).

22. The recommended repeal of sections 25 and 26 of the PBO (the former concerning presumptions and the latter possibly infringing the defendant's right of silence during trial) was largely as a result of BORO considerations. So, too, was the recommended amendment of section 20 which previously allowed the direct putting in evidence of replies obtained from a defendant under PBO powers. The thrust of this recommendation is that such replies may now be admitted in evidence only to impeach the credibility of defendants who give evidence at variance with their previous statements.

23. In accordance with the Hong Kong Government's aim of implementing these recommendations as soon as possible, a Bill incorporating legislative amendments consequent upon the Review Committee's recommendations and conclusions was introduced into the Legislative Council in May 1995. The Bill is now under consideration by a Bills Committee. The Hong Kong Government hopes that the amendments will pass into law by the end of the current legislative session (July 1995).

Complaints against the police

24. In the third periodic report in respect of Hong Kong under article 40 of the Covenant, the Committee was given information concerning the system for handling complaints against police officers.

25. Some NGOs and Legislative Council members are not satisfied with the present system. The Hong Kong Government has thoroughly examined the issue. It has concluded that the existing system is generally satisfactory,

especially with monitoring by the Independent Police Complaints Council (IPCC), but that there are areas where improvements are needed. The Hong Kong Government is therefore implementing measures to enhance the existing arrangements.

26. These measures are the following:

(a) Steps are being taken to make the IPCC a statutory body, to clarify its powers and functions, and to enhance public awareness of its monitoring role;

(b) Since October 1994, the IPCC has interviewed witnesses in order to clarify any doubts arising from the records of investigations and to assess cases more accurately;

(c) Since September 1994, closed circuit television and video recording facilities have been installed in all interview and report rooms to provide greater transparency. This helps to deter unfair or biased questioning by police officers;

(d) The IPCC has completed a study of complaints which have been withdrawn or classified as not pursuable. The results suggest several possible reasons for such withdrawals or such classifications. These include the desire of complainants to avoid lengthy procedures and attempts by criminals to use the complaints system as a defence strategy;

(e) Publicity measures will be taken to enhance public awareness of the right to complain and of the IPCC's independent monitoring role.

The Administrative Appeals Board

27. The Administrative Appeals Board Ordinance was enacted in 1994. The Board is an open and independent body whose task is to hear statutory appeals against certain administrative decisions. It has all the powers and discretions conferred on the original decision maker, and may confirm, vary or reverse decisions under appeal. It may also make such other orders as it thinks fit, or order that the case be sent back to the respondent for consideration.

The Organized and Serious Crimes Ordinance

28. This Ordinance was enacted on 20 October 1994. It confers new powers of investigation into organized crime, and certain other offences. It also provides for the confiscation of proceeds of crime and provides for the sentencing of certain offenders. The Ordinance has been carefully scrutinized by the Legislative Council. It is considered to be consistent with the Covenant.

Article 3

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

29. In June 1994, the Hong Kong Government announced its decision to seek the extension of CEDAW to Hong Kong, but with reservations relating to the rent concession provided under annex III to the Joint Declaration 1/ and to the small house policy (see paras. 357-359 below under art. 26 of the Covenant). The purpose of these reservations will be to enable the Hong Kong Government to pursue its existing policies in these areas. The United Kingdom and Hong Kong Governments are now considering the formulation of the reservations that will be needed on these and other aspects of the Convention.

30. Consultation with the Government of China will be necessary since the extension of the Convention to Hong Kong will entail the acceptance of new international obligations which it is intended should continue in force after 1997.

Sex Discrimination Ordinance

31. Equality of opportunity between the sexes involves important issues of justice, fairness and equality of reward for endeavour. The Hong Kong Government is committed to fostering sex equality in Hong Kong. To that end, it introduced the Sex Discrimination Bill into the Legislative Council in October 1994. This became law in June 1995.

32. As is explained more fully in the following paragraphs, the purpose of the Sex Discrimination Ordinance is to outlaw sex discrimination and sexual harassment in specified areas of activity. These include employment, education, provision of goods and services, and the disposal and management of premises. It also outlaws discrimination on the grounds of marital status or pregnancy.

33. The Ordinance provides for the establishment of an independent statutory body, the Equal Opportunities Commission, which will be the focus for action in matters pertaining to sex equality. Its functions will include:

(a) Working towards the elimination of sex discrimination and sexual harassment;

(b) Promoting equality of opportunity between men and women;

(c) Upon complaint, investigating any act alleged to be unlawful by virtue of the Ordinance and endeavouring, by conciliation, to effect a settlement of the matter in dispute.

34. The Commission will also develop codes of practice in the areas of activity regulated under the Ordinance. These codes will provide practical guidance for compliance with the legislation by the parties concerned.

35. The Ordinance confers jurisdiction on the District Court to hear claims of unlawful sex discrimination and sexual harassment in the same way as other claims in tort. To enhance accessibility, these cases will be assigned to a designated court. Persons who are neither legally qualified nor parties to the proceedings may be permitted to address the court in the proceedings and the Chinese language may be used.

Employment: equal pay for equal work

36. The Ordinance gives effect to the principle of equal pay for equal work. More generally, it renders sex discrimination unlawful in certain prescribed areas of activity, including employment. In particular, it will be unlawful for employers to discriminate between applicants for jobs or in promoting, transferring or training existing employees.

37. The Equal Opportunities Commission will develop Codes of Practice to provide guidance to employers and employees.

Protection of pregnant employees

38. The Hong Kong Government is considering further improvements to the protection given to pregnant employees under the Employment Ordinance. These will include removing the requirement of a qualifying period of service for entitlement to maternity leave, providing protection against termination of employment on grounds of pregnancy, and prohibiting the assignment of pregnant employees to harmful work. The Hong Kong Government is consulting the Labour Advisory Board on the proposals with a view to introducing the necessary legislation into the Legislative Council at the earliest opportunity.

Special measures

39. The Hong Kong Government has also agreed that provisions should be included in the Ordinance to allow special measures to be taken to assist disadvantaged groups.

40. The Hong Kong Government expects the Ordinance and the Equal Opportunities Commission to make an effective contribution towards eliminating sex discrimination and sexual harassment. The Government will set up the Equal Opportunities Commission as soon as possible.

Women in politics

41. In Hong Kong, women enjoy the same rights to participate in public affairs as men do. The laws governing elections to the Legislative Council, municipal councils and district boards make no reference to the sex of electors or the candidates. In 1994, female electors accounted for 47.6 per cent of the registered electorate. The voter turnout statistics revealed no significant difference in the levels of participation by sex.

Women in rural elections

42. There are three levels of election in the villages of the New Territories. The election of village representatives is the first. Until recently, village representatives were elected by a process which had regard only to heads of households. Heads of household, regardless of sex, had the right to vote and to be elected as village representatives. But in practice, most heads of household are men and there has been criticism that this process violates the equality of the sexes. This system is undergoing considerable changes. It is now the policy of the Heung Yee Kuk - which is the Government's statutory adviser on New Territories matters - that, in future, village representatives should be elected on a one-person-one-vote basis and hold office for a fixed four-year term. About 430 villages are already applying this system. Others are expected to follow in 1996. The Sex Discrimination Ordinance provides that the Government shall not recognize village representatives who have not been elected or otherwise chosen on a "one-person-one-vote" basis. The Hong Kong Government will explain the new law to the villagers and persuade the remaining villages to comply with it.

43. There are over 690 villages in the New Territories with about 900 village representatives. Village representatives make up the 27 rural committees which comprise the second level of the rural electoral system. The General Assembly of a rural committee includes all the village representatives and, where appropriate, Kaifong 2/ and fishermen's representatives in the particular committee's area. The election of rural committee chairmen is carried out on the one-person-one-vote basis. The chairmen and vice-chairmen of the rural committees are ex officio councillors of the Heung Yee Kuk which is the third level of the rural electoral system. Neither at the second nor at the third level is any differentiation made between men and women.

44. The rural representative system links into the three-tier representative government structure. At the most local level, the 27 rural committee chairmen are ex officio members of the New Territories district boards. At the regional level, the chairman and the two vice-chairmen of the Heung Yee Kuk are ex officio members of the Regional Council. The Heung Yee Kuk also comprises the rural functional constituency, which returns one seat to the Legislative Council. Again, there is no differentiation, in this structure, between men and women.

Equal rights of men and women in respect of education

45. The Hong Kong Government's policy is to provide every child, irrespective of sex, with the best possible education from which he or she is capable of benefiting, at a cost that parents and the community can afford. No one is to be deprived of a place in the education system because of lack of means. Women and men have the same opportunity to receive the education of their choice according to their ability. In 1993, the ratio of female to male students studying full-time in matriculation and tertiary courses was 0.97:1 (the ratio of female to male population in the 17-21 age bracket was 0.95:1).

Women in the acquisition and transmission of nationality

46. The law in force in Hong Kong (as in all British dependent territories) governing nationality is the law of the United Kingdom - specifically, the British Nationality Act 1981 and the British Nationality (Hong Kong) Act 1990. Under this law, citizenship may be acquired by women on the same terms as by men and persons may acquire citizenship by virtue of any of the same prescribed connections with a mother as with a father.

Women and age discrimination

47. Labour unions and women's groups cite age discrimination as a major employment difficulty which especially affects women, especially those aged 30 or above. But the experience of Hong Kong's Labour Department does not support this. There is no strong evidence that unemployment amongst middle-aged women is due to age discrimination. Rather, the root of the problem appears to be a lack of qualifications or skills. Family responsibilities also restrict job choices. Another factor is that Hong Kong is in the process of restructuring from a manufacturing to a service economy. Factories, largely in the electronics and garment industries, are rapidly relocating to China. Those industries were major employers of women and that is why most of the workers displaced in the process are middle-aged women. This has, perhaps, given the impression that large numbers of women are losing their jobs as a result of sex and age discrimination. In fact, unemployment and underemployment rates for women are lower than those for men.

48. Workers of both sexes enjoy equal opportunities. Employers and employees are free to make employment choices that most suit their individual needs. Market forces dictate the requirements to which they are subject. In recent years the labour market has been persistently tight and employers have relaxed or removed age limits in order to recruit sufficient personnel. Since 1992, the Labour Department has actively sought to persuade employers not to impose sex preferences when recruiting employees through the Department's Local Employment Service. It also encourages employers to raise age limits. The Hong Kong Government will nevertheless conduct a study to establish whether an age discrimination problem especially affecting women exists and whether remedial measures are necessary.

Rights in respect of marriage

49. This is discussed in paragraphs 276 to 279 below (under art. 23 of the Covenant).

Rights in inheritance/small house policy

50. This is discussed in paragraphs 355 to 359 below (under art. 26 of the Covenant).

Article 4

Emergency Regulations Ordinance

51. As noted in paragraph 32 of section A (General profile), the BORO contains a provision (sect. 5) which corresponds to article 4 of the Covenant and which permits derogation from certain of the provisions of the Bill of Rights in time of public emergency. This power would be exercised by regulations made under the Emergency Regulations Ordinance. However, the Hong Kong Government has completed a review of the Emergency Regulations and has repealed all subsidiary legislation made under the Ordinance. This action removes a large body of anachronistic regulations, many of which date back more than 40 years. If an emergency arose in future, new regulations would have to be made. The Letters Patent (before 1 July 1997) and the Basic Law (from that date) would preclude the making of any new regulations which are inconsistent with the BORO and the Covenant as applied to Hong Kong.

Article 5

Protection under the BORO

52. As noted in paragraphs 29 to 33 of section A (General profile), the provisions of the Covenant as applied to Hong Kong have been incorporated into local law by the BORO. The provisions of article 5 of the Covenant are reproduced verbatim in section 2 (4) and (5) of the BORO in relation to the Bill of Rights which the BORO establishes.

Article 6

Abolition of the death penalty

53. The death penalty was abolished in April 1993 with the enactment of the Crimes (Amendment) Ordinance 1993. The death sentence for murder has been replaced by mandatory life imprisonment, under section 2 of the Offences Against the Person Ordinance (Cap. 212). In the cases of treason and of piracy with violence, the death penalty has been replaced with discretionary life imprisonment, to be decided by the court in accordance with section 2 (2) and section 19, respectively, of the Crimes Ordinance (Cap. 200).

Article 7

Extension of the Convention against Torture to Hong Kong

54. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by the United Kingdom on 8 December 1988. It was extended to Hong Kong on 8 December 1992. The Chinese Government has stated that it has no objection in principle to the continued application of the Convention in Hong Kong after 1997.

Enactment of Crimes (Torture) Ordinance

55. Torture is prohibited under section 3 of the Crimes (Torture) Ordinance, which was enacted in January 1993 to give effect to the provisions of the Convention against Torture. A public official or person acting in an official capacity, whatever his nationality or citizenship, commits the offence of torture if, in Hong Kong or elsewhere, he intentionally inflicts severe pain or suffering on another person in the performance or purported performance of his official duties. Other persons, whatever their nationality or citizenship, commit the offence of torture if, in Hong Kong or elsewhere, they intentionally inflict severe pain or suffering on another person at the instigation or with the consent or acquiescence of a public official or any other person acting in an official capacity and the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

56. For the purposes of the Ordinance, it is immaterial whether pain or suffering is physical or mental and whether it is caused by an act or an omission.

57. It is a defence for a person charged with an offence under the Ordinance in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

58. The gravity of the offence of torture is reflected in the sanction imposed: a person contravening the Ordinance is liable to imprisonment for life.

59. There has not been any reported case of torture as defined in the Crimes (Torture) Ordinance.

Protection against torture, etc., under the BORO

60. The Crimes (Torture) Ordinance focuses primarily on torture as defined in paragraph 55 above. But acts which constitute torture or cruel, inhuman or degrading treatment or punishment are also prohibited by article 3 of the Bill of Rights, as is the subjection of persons to medical or scientific experimentation without their free consent. Read in conjunction with that article, section 6 of the BORO satisfies the requirement of article 14 of the Convention against Torture and article 2.3 (a) of the Covenant to provide redress and an enforceable right to fair and adequate compensation to victims of torture.

Protection against torture under the Geneva Conventions Act 1957

61. Under the Geneva Conventions Act 1957, as extended to Hong Kong, it is an offence to inflict torture or inhuman treatment on a person who is a protected person under one of the four Geneva Conventions.

Other protection against torture, etc.

62. It is an offence in Hong Kong, both under common law and under the Offences against the Person Ordinance, to assault a person. Torture could also, depending on the circumstances, involve the commission of such offences as murder, manslaughter, wounding, etc. An assault also constitutes a civil wrong and can found a civil action.

63. Further and more detailed information about the legislative and administrative measures taken by the Government of Hong Kong to protect persons against acts of torture, etc. (including measures relating to complaints against the disciplined forces and the remedies available) can be found in the initial report in respect of Hong Kong submitted to the Committee against Torture.

Protection of persons with mental illness or mental handicap against treatment without consent

64. There are some circumstances where doctors may be justified in giving treatment to persons with mental illness or mental handicap even without their consent. Two possible formulations of the underlying principle have been accepted in recent cases in Hong Kong. One is that such treatment may be given where it is necessary to save life or to prevent a serious deterioration in the patient's physical or mental health. The other is that, if the patient is likely to be permanently incapable of giving consent and there is nobody who is in a position to do so on his or her behalf, a doctor is justified in doing whatever good medical practice requires to be done in the best interests of the patient's health.

65. In this situation, the Hong Kong Government considers it necessary to legislate to safeguard patients' rights. Following a 1989 ruling by the House of Lords in an English case, a Hong Kong Government review group has proposed amending the Mental Health Ordinance (Cap. 136) to provide more effective protection of patients' rights in respect of medical treatment of an irreversible or controversial nature. The amendment will require a declaration to be sought from the High Court as to whether the proposed treatment is lawful. It will apply to operations such as sterilization and others to be specified by regulation. This will replace the existing situation in which doctors have a discretion as to whether to seek such a declaration but are not bound to do so before proceeding with what they believe to be lawful treatment.

Abolition of corporal punishment in schools

66. Subject to certain legal restrictions, corporal punishment in schools used to be permitted in respect of boys. The practice was abolished in September 1991.

Article 8

Slavery or servitude: forced or compulsory labour

67. Article 4 (1) and (2) of the Bill of Rights expressly prohibits slavery and the slave trade in all their forms and also the holding of any person in servitude. These practices do not exist in Hong Kong. There is no forced or compulsory labour, which is also expressly prohibited by article 4 (3) of the Bill of Rights, and hard labour is not imposed as a punishment for a crime. Consistently with article 8.3 (c) of the Covenant, the term "forced or compulsory labour" in article 4 of the Bill of Rights does not include:

(a) Any work or service normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(b) Any service of a military character and, where conscientious objection is recognized, any national service required by law of conscientious objectors;

(c) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(d) Any work or service which forms part of normal civil obligations.

Foreign workers

68. Hong Kong labour legislation does not differentiate between local and foreign employees. Foreign Domestic Helpers (FDHs) are entitled to the same statutory protection as local workers. They have access to the Labour Department's conciliation services if they have complaints or disputes. If their claims cannot be settled through conciliation, they have the right to a hearing at the Labour Tribunal or the Minor Employment Claims Adjudication Board for adjudication. If it is ascertained that FDHs are being maltreated, they will be granted permission to change employers. The "two-week rule" (see para. 365 below, under art. 26 of the Covenant) is applied with flexibility and should not - as has sometimes been suggested - inhibit FDHs from lodging complaints.

Article 9

Report by the Law Reform Commission on arrest

69. The "Update" to the third periodic report in respect of Hong Kong under the Covenant stated that the Law Reform Commission (LRC) was examining the existing law and practices in respect of stop and search, arrest and detention (CCPR/C/58/Add.11, paras. 38-42). The Commission published its "Report on arrest" in November 1992, recommending that Hong Kong adopt the relevant provisions of the United Kingdom Police and Criminal Evidence Act. As these involve highly complex and technical issues regarding the powers of law enforcement agencies, the Hong Kong Government is examining the recommendations in detail in the light of the current state of crime in Hong Kong.

70. A government working group is actively examining the LRC "Report on arrest". In view of the complex and technical nature of the subject and the need to strike a balance between the fight against crime and the protection of human rights, it will take some time for the working group to complete its study.

Amendments to the Police Force Ordinance

71. The Police Force Ordinance was one of the six ordinances exempted from the operation of the BORO for one year from the date of the latter's coming into operation in June 1991 (see sect. 14 of the BORO). This was to avoid the risk of disrupting law enforcement operations in vital areas if the courts discovered any inconsistency with the BORO. It became clear in early 1992 that the LRC study would not be completed in time to allow the necessary amendments to be made to the Police Force Ordinance before the "freeze period" expired in June 1992. In view of the time constraints, the Hong Kong Government decided to embark on a separate review of the Police Force Ordinance, to address human rights problems first.

72. The review drew attention to provisions empowering police officers to stop, detain, search or arrest persons in situations where they could exercise their discretion without having to satisfy objective criteria. This might reasonably be described as "arbitrary" within the meaning of the relevant articles of the Bill of Rights. Accordingly, sections 50 (1), 50 (2), 50 (3), 50 (6), 50 (7), 51, 54 and 56 of the Ordinance were amended in June 1992. The more significant amendments are outlined below.

73. Section 50 (1) was amended so that the power to arrest a person reasonably suspected of being guilty of an offence will exist only:

(a) If the offence is one for which the sentence is fixed by law (for example, an offence for which there is mandatory sentence of life imprisonment) or for which a person may be sentenced to imprisonment; or

(b) If it appears to the police officer that service of a summons is impracticable.

As a result, the police may no longer arrest persons who may be charged with any offence - or whom the police may reasonably suspect of being guilty of any offence - no matter how trivial the offence may be.

74. Section 50 (2) was amended to restrict the exercise of the police powers available under this section to the arrest of persons who might lawfully be apprehended under section 50 (1) or section 50 (1B) of the Ordinance. The objective was to remove any possible inconsistencies with articles 5 (1) and 14 of the Bill of Rights which provide that no one should be subject to arbitrary arrest or interference with his privacy.

75. Section 50 (6) was amended so that, when a person is arrested, the police may search for and take possession only of things that they reasonably suspect will be of value to the investigation of an offence that that person has committed or is reasonably suspected of having committed. The old law - which gave the power to search for and seize things reasonably suspected of

throwing light on the character or activities of the arrested person or his associates - was thought likely to permit an arbitrary interference with the right to privacy, contrary to article 14 of the Bill of Rights.

76. Section 50 (7) of the Ordinance was amended in order to impose a similar restriction on the power of search and seizure under a magistrate's warrant. Under the amended subsection, a magistrate may no longer authorize the search for articles that may throw light on the character or activities of a suspect or his associates: a warrant may now be issued only to search for articles likely to be of value to the investigation of an offence.

77. Section 54 formerly allowed police officers to stop and search, and if necessary to arrest and detain for further inquiries, persons acting in a suspicious manner, or whom they suspected of having committed, or of intending to commit, any offence. This was considered arbitrary and the section provided no indication of how long the detention for inquiries might last. It was therefore amended to separate the power under section 54 (1) to stop a person acting in a suspicious manner from the power under section 54 (2) to stop a person reasonably suspected of having committed or of being about to commit or of intending to commit any offence. In respect of the former, section 54 (1) empowers a police officer to:

(a) Stop a person for the purpose of demanding that he produces proof of his identity for inspection;

(b) Detain him for a reasonable period while the officer inquires whether he is a suspected offender; and

(c) If necessary, search him for anything that may present a danger to the officer.

78. Section 56 empowered the police, in certain circumstances, to stop and detain any person removing furniture from premises at night. The provision was obsolete and was accordingly repealed.

79. These amendments were only a first step. The Hong Kong Government is continuing its examination of the Law Reform Commission's "Report on arrest".

80. Amongst the issues still under review is the need to balance the privacy of the individual against the need to stem illegal immigration into the territory. Police officers are aware that they should not abuse their powers and that any such abuse may result in criminal or disciplinary charges. In 1994, the police checked a total of 3,844,307 persons and, as a result, located 9,763 wanted or missing persons. At the same time, the practice of police patrols stopping and questioning suspects located 31,521 illegal immigrants. Yet there were only 177 complaints of unnecessary use of authority in the whole of 1994.

Power of detention

81. An arrested person may normally be detained for questioning for up to 48 hours without charge. At the expiry of this period, the arrested person must either be charged and brought before a magistrates' court, or be bailed

to appear in court, or be released without charge, with or without bail. The powers to detain or arrest are circumscribed by article 5 of the Bill of Rights, which prescribes the basic rights of a suspect in terms exactly reflecting those of article 9 of the Covenant. Foreign detainees may communicate with their High Commissions, embassies or consulates and appropriate arrangements for this purpose are made by administrative means.

82. Existing practices to ensure that those arrested are informed of the true reason for their arrest were described in the first report under the Covenant in respect of Hong Kong.

Rules and directions for the questioning of suspects and taking of statements

83. In late 1992, a new set of guidelines was introduced for law enforcement agencies to follow when questioning suspects and taking statements. The guidelines, which are based on the 1964 Judges' Rules of the United Kingdom, are known as "Rules and Directions for the Questioning of Suspects and the Taking of Statements". The aim is to ensure that written statements and oral answers obtained from suspects are voluntarily given, failing which they are not admissible in evidence. The Rules and Directions also stipulate the facilities which should be made available to persons in custody or under investigation, who must also be informed of their rights and of such facilities.

Amendments to the Immigration Ordinance

84. A number of amendments were made to the Immigration Ordinance in 1992 to bring it into line with the BORO. In particular, section 28 of the Ordinance (detention pending determination of objection), which conferred a power to detain a person who had lodged an objection in relation to an act of a public officer under the Ordinance, was repealed as it was thought likely to permit an arbitrary deprivation of personal liberty. Sections 29 (2) and 31 were also amended to restrict the power to extend the detention of a person for the purpose of inquiries into his activities and to limit to a maximum of 14 days the period for which detention may be extended (making a total maximum of 28 days' permitted detention).

Amendments to the Prevention of Bribery Ordinance and the Independent Commission against Corruption Ordinance

85. Amendments were made in 1992 to the prevention of Bribery Ordinance (PBO) and the Independent Commission against Corruption Ordinance (ICACO) to remove possible conflicts with the BORO.

86. Amendments relevant to article 9 of the Covenant were:

(a) Repeal of the provisions of section 16 (1) (c), section 16 (1A), part of section 17 (1), and the whole of section 17 (1A) of the PBO and section 10C (1) (d) and section 10C (1A) of ICACO which empowered an ICAC officer to detain "any person" during a search under warrant issued under the two ordinances. Since "any person" could include a person who was not a

suspect, the repeal was necessary to ensure that such a person was not subject to arbitrary detention and that his privacy was not subject to arbitrary interference;

(b) Repeal of the provisions in section 18 of the PBO which enabled the Commissioner or ICAC officers to apply to a magistrate for the remand of a suspect on bail or in custody for a maximum period of 28 days without having been charged. The aim of this repeal was to protect the suspect's right to liberty.

Power of detention - Immigration Ordinance

87. Under section 26 of the Immigration Ordinance, the police or the Immigration Service may detain persons for not more than 48 hours for inquiries relating to any part of the Ordinance except the provisions relating to deportation. (Detention for inquiries relating to deportation is covered by sect. 29.) The power is confined to cases where the officer is satisfied that the person will abscond if not detained. The detention may be extended for a further five days under the authority of a more senior officer, that is to say, an official of, or above, the rank of Principal Immigration Officer or Assistant Commissioner of Police. Under section 32 (2A) a person may be detained by order of the Director or Deputy Director of Immigration for not more than seven days, pending the decision whether a removal order should be made; a further maximum period of 42 days can be authorized by the Secretary for Security. A person against whom a removal order is made may be detained under the authority of the Secretary for Security under section 32 (3), or the Director or Deputy Director of Immigration under section 32 (3A), pending his removal from Hong Kong.

88. Section 32 (4) provides that a person may be detained for not more than 28 days on the authority of the Secretary for Security (sect. 32 (4) (a)) and for further periods, not exceeding 21 days, by order of a court upon any application of the Attorney-General (sect. 32 (4) (b)), for the purpose of his giving evidence at the trial of any offence or suspected offence. The purpose of these provisions is to prevent the Director of Immigration from prematurely removing from Hong Kong persons who are needed as witnesses in criminal proceedings but whom he would otherwise be required to remove.

89. In 1994, the Hong Kong Government reviewed this particular power to detain, with a view to ensuring that witnesses should not face unduly long detention for the purpose of giving evidence. As part of that process, it asked the judiciary to set early trial dates to shorten the waiting time for detained witnesses as much as possible. It also amended the relevant legislation so that juvenile illegal immigrants are now detained at boys and girls homes operated by the Social Welfare Department, instead of in penal institutions. Other improvements included using detention for this purpose only when recognizance was not possible, asking the foreign Governments concerned to return illegal immigrants to Hong Kong for the purpose of giving evidence, and giving the detainees printed notices informing them of their rights. The Hong Kong Government is also considering proposing an amendment to section 32 (4) (a), which vests the authority for detention in the

Secretary for Security, a public official. The proposed amendment, if approved, would "revest" that authority in the courts, and detainees would be given access to legal aid and to the duty lawyer service.

90. All immigration detainees have the right to challenge the legality of their detention by way of habeas corpus proceedings.

91. In 1994, 25,439 immigration offenders were detained under the provisions of the Immigration Ordinance, and 14,345 were prosecuted.

General right to bail

92. Following its inquiry into the law relating to bail for persons charged with an offence, the Law Reform Commission recommended that the existing law should be codified, and that subject to certain specified conditions, a general right to bail should be created. The Criminal Procedure (Amendment) Ordinance was enacted on 23 June 1994 to provide that right and to codify and improve the existing law of bail.

93. Sections 7 and 8 of the 1994 Ordinance came into operation on 1 April 1995. They provide for the detention or bail of a person against whose successful appeal in the Court of Appeal the Attorney-General is appealing to the Privy Council, and empower the Court of Appeal to grant bail to appellants whose convictions are affirmed by the Court of Appeal but who are appealing further to the Privy Council. Other provisions of the Ordinance will be brought into force once the requisite subsidiary legislation is in place.

Challenges to lawfulness of detention

94. Recent statistics for cases in which individuals challenged the lawfulness of their detention by way of applications for habeas corpus or judicial review are as follows:

		1991	1992	1993	1994
(a)	Number of habeas corpus judicial reviews	18	11	10	5
	(i) Successful cases	1	3	1	2
	(ii) Unsuccessful cases	14	7	8	2
	(iii) Outstanding cases	0	0	0	1
	(iv) Cases withdrawn	3	1	1	0
(b)	Number of judicial reviews in relation to search warrants	0	3	0	0

95. In addition to being able to sue for damages for false imprisonment at common law, an aggrieved person may now take action for breach of article 5 of the Bill of Rights which, as noted above, is in identical terms to article 9 of the Covenant. As explained in paragraph 31 of section A (General profile), section 6 of the BORO provides that a court in proceedings within its jurisdiction in an action for breach of the Ordinance may grant such remedy or relief in respect of such a breach as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances.

Vietnamese asylum seekers

96. Since 1975, over 195,700 Vietnamese asylum seekers have arrived in Hong Kong, of whom 142,400 have so far been recognized as refugees and have been resettled in other countries. Since the introduction of the refugee status determination process in June 1988 (see below), 71,800 Vietnamese asylum seekers have arrived in Hong Kong. There are currently 23,030 Vietnamese in the camps, about 1,600 of whom have been given refugee status and, accordingly, permission to stay in Hong Kong pending resettlement overseas. The rest have been determined not to be refugees. These, accordingly, have been refused permission to remain, and, as explained below, have been detained pending repatriation.

97. Since 16 June 1988, all Vietnamese arriving in Hong Kong without valid travel documents have been screened to determine whether they have a genuine claim to refugee status. The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol have not been applied to Hong Kong. But the status determination procedures, which were devised in conjunction with the Office of the United Nations High Commissioner for Refugees (UNHCR), were designed to apply the criteria contained in those instruments. All new arrivals are briefed on the status determination process in Hong Kong. Vietnamese asylum seekers are interviewed by immigration officials using a questionnaire designed in agreement with UNHCR. They are informed in writing of the outcome of their application for refugee status. At the same time, if the decision is adverse, they are advised of their right to apply for review. An independent Refugee Status Review Board reviews the facts of the case and the Immigration Department's decision. Should the Board find in favour of the applicant, the Director of Immigration's decision is reversed. By the end of June 1995, the Board had reviewed the cases of about 48,580 people and reversed the decisions of the Director of Immigration in about 2,820 cases. Apart from a few residual cases, such as new arrivals, screening of all Vietnamese migrants was completed in October 1994.

98. The present status determination procedures have been refined and developed in the light of experience. Since they were first introduced in June 1988, a number of changes have been made, in consultation with UNHCR, to streamline and improve them. For example, all screening interviews are now read back to asylum seekers during screening in order to ensure the accuracy of the claims recorded. If, on completion of the procedures, UNHCR is of the opinion that a person is a refugee, even if he has been screened out as a non-refugee, UNHCR may declare him to be a refugee under its mandate and the Hong Kong Government will then treat him as a refugee. Out of 45,760 people so far determined by the Immigration Department and Review Board not to be refugees, UNHCR has extended its mandate to some 1,540.

99. Those who are recognized as refugees are housed (pending resettlement) in open centres where there is no restriction on their movements. However, those who are waiting for their refugee status to be determined, and those who have been determined not to be refugees, are held in detention centres. The policy to detain in these circumstances was introduced in 1988 to enable Hong Kong to cope with the major influx of undocumented Vietnamese asylum seekers. As a small and densely populated territory, Hong Kong is faced with serious resource difficulties in providing accommodation for large and unpredictable numbers of asylum seekers, often at short notice. There is, therefore, a need to exercise some form of control by detaining those who have sought to enter the territory illegally, first pending their status determination and then, if they are determined to be non-refugees, pending their repatriation to Viet Nam. Against the backdrop of illegal immigration from China, it would not be possible for the Hong Kong Government to defend a policy which would leave the Vietnamese migrants at liberty, whilst illegal immigrants from China, once caught, are immediately repatriated. Furthermore, to do so would send an undesirable and misleading message to those in Viet Nam who might be contemplating clandestine departure for Hong Kong.

Visits to refugee camps and detention centres by non-governmental organizations

100. International and local non-governmental organizations have visited refugee camps and detention centres in Hong Kong on many occasions in the past few years. They have included Amnesty International, the Lawyers' Committee for Human Rights, the Women's Commission on Refugees and the Indo-China Resources Centre, all of whom have prepared reports on various aspects of the policy and practice relating to the treatment of Vietnamese migrants in Hong Kong. These reports have contained criticisms of current law and practice. The Hong Kong Government has studied the reports carefully and has responded to the concerns expressed where it considered that the criticisms were well founded and where it considered that there was a reasonable practical response to be made. For example, improvements have been made both to camp conditions and to status determination procedures.

Comprehensive plan of action

101. At a conference on Indo-Chinese refugees hosted by UNHCR at Geneva in June 1989, all the main resettlement and first asylum countries and the country of origin agreed to a "Comprehensive Plan of Action" (CPA). This provides for the implementation of a fair and just refugee determination process. Detention in Hong Kong of migrants pending status determination, and of illegal immigrants pending repatriation, is consistent with the measures introduced by other first asylum countries faced with the same problem. A commitment to the CPA remains the cornerstone of the policies of the United Kingdom and Hong Kong Governments in handling the problem of Vietnamese asylum seekers.

Legal assistance to Vietnamese asylum seekers

102. In addition to the legal advice provided in the status determination process, all Vietnamese asylum seekers have access to the Hong Kong legal system. Members of the private legal profession have access to detention

centres in order to provide legal advice to those who wish to appeal to the Refugee Status Review Board against an initial unfavourable screening decision or to challenge the lawfulness of their detention in proceedings before the courts. Since late 1990 and up until late 1993, volunteer lawyers of the Jesuit Refugee Service (JRS) provided Vietnamese asylum seekers with legal advice before they attended their status determination interview. Pre-screening counselling was also undertaken by UNHCR lawyers. Since the withdrawal of UNHCR lawyers in December 1994, legal counselling is provided by the Duty Lawyer Service to Vietnamese migrants who are screened out by the Immigration Department and intend to appeal to the Refugee Status Review Board. Vietnamese asylum seekers are eligible for legal aid to bring proceedings in the courts of Hong Kong and officers of the Legal Aid Department have been given access to the centres to assist clients for this purpose.

Court cases concerning Vietnamese asylum seekers

103. In recent years a number of cases have come before the courts in which Vietnamese asylum seekers have challenged the lawfulness of their detention or decisions refusing them permission to remain in Hong Kong as refugees.

104. One case, Pham Van Ngo and 110 others (1990) HCMP 3581/90, in which the lawfulness of detention of 111 asylum seekers was challenged, attracted international attention. Having arrived in Hong Kong with the intention of proceeding to Japan, they were offered assistance with repairs to their boat. That offer was withdrawn, and the boat destroyed, when, upon examination, it appeared that the boat could not be made seaworthy. The High Court held that in the circumstances the 111 had not been detained lawfully under the Immigration Ordinance and expressed the view that the detention contravened article 9 (1) of the Covenant. The 111 were subsequently re-detained, initially for examination and then as unlawful entrants, but were released on token bail within 24 hours. They were later granted refugee status and resettled abroad.

105. The case of R. v. Director of Immigration and Refugee Status Review Board ex parte Do Giau and others (1992) 1 HKLR 287, involved applications for judicial review of decisions refusing nine asylum seekers permission to remain in Hong Kong as refugees. The hearing began on 19 November 1990. On 18 February 1991, the High Court gave judgement in respect of the first applicant, indicating that it would quash the decisions of both the immigration officer and the Refugee Status Review Board. Although the applicant sought a declaration of his status as a refugee in Hong Kong, the judge made no finding on that point. The applicant also applied for a declaration that his detention was unlawful. This was refused. The court held that the immigration officer made his decision in breach of natural justice, in that a material error of fact, which was central to his decision, was misrecorded in the record of interview, and this error was not corrected on review by the Board. The Hong Kong Government settled the proceedings on the basis of rescreening for all nine asylum seekers. Following rescreening, two were screened in as refugees, two were declared refugees by UNHCR under its mandate and the remainder were screened out as non-refugees. In the course of his principal judgement in this case, the judge accepted the legality and procedural propriety of most aspects of the screening procedures.

106. The exercise of statutory powers of detention upon arrival of Vietnamese asylum seekers on boats and without travel documents was placed under judicial scrutiny in another case in 1991. In In re Tran Quoc Cuong and Khuc The Loc (1991) 2 HKLR 312, it was held that the initial detention procedures and the procedures regulating the system of transfer between detention centres were lawful. In a situation of deteriorating order in a large detention centre, the applicants had been moved, for purposes of order and good management, to a special detention centre. The judge found that this was lawful, was not punitive, and was a necessary step to protect the rights of others. Although judgement was given in 1991, there has been an attempt to revive a dormant appeal. However, in March 1995, the Director of Immigration successfully applied to have the appeal struck out for want of prosecution. The applicants are now seeking special leave to appeal to the Privy Council in London.

107. The statutory framework for two-tier screening came under renewed scrutiny in 1992 and 1993 in the case of In re Le Tu Phuong and others (1992) M.P. No. 2368 where judgement in the lower court was given in June 1993. The judge found a number of procedural defects in the screening processes and ordered that the refugee status determinations in the cases before him be quashed. The Director of Immigration and the Refugee Status Review Board appealed and the appeal was heard in April 1994. The Director and Board succeeded on every point and the procedures and legal framework for screen[illegible] were carefully considered and approved by the Court of Appeal.

108. The legality of detention and, in particular, its length in cases where there were difficulties in returning Vietnamese migrants to Viet Nam or ex-China cases to China, were canvassed before the High Court in a habeas corpus application by 11 detainees. Judgement in the case of Chung Tu Quan and others (1994) M.P. No. 3417 was given in January 1995. The High Court upheld the detention of most of those who had been detained for some years. But, in three cases of persons who claimed they were not Vietnamese nationals, the court found that they would not be accepted by Viet Nam and that their continued detention was illegal. The Hong Kong Government appealed against this decision and, in April 1995, the Court of Appeal overturned it. The Court of Appeal found that detention under section 13D (1) of the Immigration Ordinance was not "spent". It would remain valid until there had been a full opportunity to negotiate the three detainees' return to Viet Nam and the attempt to secure this had failed, leaving no prospect of their removal from Hong Kong. In May, the three were granted leave to appeal to the Privy Council. That appeal is likely to be heard in late 1995 or early 1996.

Expenditure by Hong Kong on care of Vietnamese asylum seekers

109. The Hong Kong Government has spent some HK$ 6.75 billion (US$ 865 million) on the overall care of Vietnamese migrants between 1979-1980 and 1995-1996 (up to the end of June 1995). In September 1988, UNHCR agreed to reimburse Hong Kong for expenditure directly related to care and maintenance, amounting thus far to HK$ 1,321 million (US$ 169 million). As at the end of June 1995, UNHCR owes Hong Kong HK$ 1,023 million (US$ 131 million). The cost of the refugee status determination process to the Hong Kong Government is estimated at HK$ 9 million (US$ 1.15 million) in 1995-1996, and about 1,200 government employees are deployed daily on tasks related to the care of asylum seekers.

Voluntary repatriation programme

110. To encourage non-refugees to return to Viet Nam, a voluntary repatriation programme was introduced by UNHCR in March 1989. The Vietnamese Government has given assurances that those who return to Viet Nam either voluntarily or otherwise will not be subject to discrimination or persecution. UNHCR monitors their treatment after their return to Viet Nam. Since 1989, over 45,100 Vietnamese migrants have returned to Viet Nam from Hong Kong and there has not been a single substantiated case of persecution or discrimination.

Orderly repatriation programme

111. Following discussions in Hanoi between the Governments of the United Kingdom, Hong Kong and Viet Nam, a statement of understanding was signed on 29 October 1991. The statement provided, inter alia, that, from 29 October 1991, all new arrivals would be screened on arrival and those found to be non-refugees would be promptly returned home. Following further discussions with the Vietnamese Government, agreement was reached on 12 May 1992 on the details of an "Orderly Repatriation Programme" (ORP) for all non-refugees already in Hong Kong camps. Under this programme, the Hong Kong Government has returned a total of 1,620 non-refugees to Viet Nam. The treatment of ORP returnees has since been monitored by the British Embassy in Hanoi as well as the UNHCR office there. Subsequent monitoring reports prepared by the British Embassy and UNHCR have indicated that no ORP returnees have suffered any ill-treatment or persecution.

Assistance to Vietnamese returnees

112. All who return home, voluntarily or otherwise, receive guarantees of non-persecution from the Vietnamese Government and reintegration assistance from UNHCR, which monitors their treatment after return. Until November 1994, they were also eligible for assistance under a European Community programme whose aim was to provide job creation opportunities, start-up loans for businesses, vocational training courses and other community assistance, both for returnees and for local residents. A bridging programme now provides assistance in other forms to the returnees.

113. At a meeting held in Geneva on 14 February 1994, the Fifth Steering Committee of the International Conference on Indo-Chinese Refugees reaffirmed the fundamental principles underlying the CPA. The Steering Committee declared that, in recognition of the changing circumstances in Viet Nam, screening procedures under the CPA should no longer be applicable to Vietnamese arriving in first asylum countries after 14 February 1994. Since that date, Vietnamese arrivals have been treated in accordance with international legislation and internationally accepted practices. The Steering Committee expressed the view that status determination throughout the region, including Hong Kong, had been carried out in accordance with established refugee criteria. With the completion of first instance determinations, followed by a review upon appeal, there would be no further review under CPA procedures of the determinations made. The Steering Committee also agreed to increase the rate of repatriation, noting that orderly return programmes could have a beneficial impact on the voluntary repatriation programme. In this connection, the Steering Committee set a

target date for ending all activities and programmes under the CPA by the end of 1995. In order to promote more voluntary repatriation, a special allowance of US$ 150 was introduced in August 1994 for all Vietnamese migrants who volunteered to return to Viet Nam before the end of the year. About 1,500 migrants took up the offer.

114. In March 1995, the Sixth Steering Committee of the International Conference on Indo-Chinese Refugees reaffirmed the principles of the CPA. It adopted simplified procedures to expedite the repatriation of non-refugees. The Committee also agreed that 1,800 Vietnamese migrants be returned to Hanoi and another 1,800 to Ho Chi Minh City every month, and reiterated the aim of repatriating all migrants in the region by the end of 1995. In the case of Hong Kong, which had half of the region's Vietnamese migrant population, the Committee agreed that the aim was to repatriate all the migrants by shortly after the end of 1995.

Release of Vietnamese migrants on recognizance

115. In November 1994, 125 Vietnamese migrants were released on recognizance since their continued detention would have been unlawful. They had applied for voluntary repatriation but clearance of their return had been pending for some time. Since then, 18 of the 125 migrants have been cleared for return. Discussions with the Vietnamese Government on the return to Viet Nam of the remaining cases are ongoing.

The Whitehead Detention Centre incidents

116. On 7 April 1994, about 1,500 Vietnamese migrants in section 7 of the Whitehead Detention Centre were transferred to the High Island Detention Centre. During the transfer operation, a disturbance occurred and over 500 canisters of tear gas were fired. Some 220 complaints were later received from Vietnamese migrants about injuries, loss of property and assaults. The Governor subsequently appointed two non-official justices of the peace to conduct an inquiry into the incident. Their report was issued in June. The Hong Kong Government accepted and implemented its recommendations in full, including the appointment of independent monitors for subsequent transfer operations.

117. On 29 May 1995, the disciplined forces faced fierce resistance when 1,500 Vietnamese migrants in a section of the Whitehead Detention Centre were transferred to the High Island Detention Centre. The migrants threw a large quantity of rocks, spears and other weapons at the disciplined forces and broke through the fences separating the sections. Tear smoke was used to contain the situation and minimize injuries, and order was restored some 13 hours after the operation commenced. The migrants, as usual, were informed of the transfer in advance, and the operation was observed by independent monitors. By the end of that day, 180 disciplined officers and 27 Vietnamese migrants had been treated for injuries.

118. On 8 June 1995, 94 Vietnamese migrants were transferred from the High Island Detention Centre to Victoria Prison for return to Viet Nam under the ORP. The disciplined forces again faced strong resistance. At about midnight, the migrants broke down internal gates and set fire to the camp

kitchen and adjoining buildings. They pillaged offices and stole stores and equipment. Tear smoke was fired to protect the firemen putting out the fire and in defence of the Administration Block, which came under attack. The transfer exercise, which was scheduled to commence at 10 a.m., was advanced to 7.45 a.m. As before, the disciplined forces faced a barrage of dangerous missiles and home-made weapons. Tear smoke was again used. The situation was brought under control at about 8.15 a.m. Two disciplined service officers and six Vietnamese migrants were treated for minor injuries. The transfer operation was again observed by independent monitors.

Reception, detention and treatment of mentally disordered persons

119. The Mental Health Ordinance, chapter 136, regulates the reception, detention and treatment of mentally disordered persons. It provides, inter alia, that no person shall be received into a mental hospital otherwise than on transfer from another mental hospital, on return from leave of absence or on recapture except:

(a) Upon the order of a court;

(b) As a voluntary patient;

(c) As a patient under observation;

(d) As a temporary patient;

(e) By virtue of a hospital order;

(f) Upon remand by a court or magistrate for the purpose of observation, investigation and treatment;

(g) By virtue of a transfer order; or

(h) Upon the warrant of the Governor.

120. The Mental Health (Amendment) Ordinance was enacted in June 1988. It introduced certain new provisions to deal with areas of the existing Ordinance which were perceived to be defective. These included the deletion of the provision to admit mentally disordered persons as temporary patients and the involvement of justices of the peace in involuntary admissions to mental hospitals.

121. The 1988 amending Ordinance made the following major provisions:

(a) A mandatory requirement for a medical assessment before a patient is detained in a mental hospital for observation;

(b) A new definition of the term "mental disorder" which includes a definition of psychopathic disorder;

(c) A system of guardianship for mental patients over the age of 18 years;

(d) A system of conditional discharge with powers of recall for certain patients;

(e) A channel of appeal for all patients, irrespective of whether they have committed an offence or not;

(f) Authority for the police to remove from any place persons suspected of being mentally disordered to a hospital for assessment by a medical practitioner;

(g) A right, prior to committal to a mental hospital for observation and treatment, for patients to be heard by a judge or magistrate, if they so wish;

(h) Committal forms to be countersigned by a judge or magistrate;

(i) The exclusion from committal of those who suffer from mental retardation only.

122. In 1995, amendments to the Legal Aid Ordinance extended legal aid to persons appealing to the Mental Health Review Tribunal against detention in mental hospitals or the Correctional Services Department's Psychiatric Centre.

Proposed further steps to promote the well-being of mentally disordered persons

123. The Hong Kong Government is reviewing the Mental Health Ordinance with a view to identifying areas for further improvement. It intends to propose amendments in the 1996-1997 legislative session. Initial ideas include amending the Mental Health Ordinance (Cap. 136) by redefining the term "mental disorder" in section 2 to distinguish between persons with mental illness and those with mental handicap; and improving the provisions on guardianship in sections 33 to 35, and those in Part II of the Ordinance on the management of the property and the financial affairs of mentally disordered persons. The Hong Kong Government is also considering new provisions on consent to medical and dental treatment. It also proposes amending the provisions on fitness to plead and acquittal on grounds of insanity in sections 75 and 76 of the Criminal Procedure Ordinance (Cap. 221). This will increase the disposal options for the courts in dealing with accused persons found unfit to plead or not guilty by reason of insanity. The new range of options will include hospital orders, guardianship orders, supervision and treatment orders and orders for absolute discharge. At the same time, the Hong Kong Government proposes deleting section 45 of the Mental Health Ordinance, which prescribes the powers of courts to make hospital orders. If approved, this would have the effect of placing all legislation on disposal options under one ordinance.

124. Regulations 4 to 9 of the Mental Health Regulations (subsidiary legislation, chap. 136) currently provide the medical superintendent of a mental hospital with a number of statutory powers to impose restrictions on the activities of patients in mental hospitals and their communication with outsiders. Because of their inconsistency with the BORO, the Government is planning to amend these regulations in 1995-1996 by defining the conditions under which medical superintendents can exercise these powers.

Article 10

Regulation and management of penal institutions

125. The regulation and management of penal establishments in Hong Kong are governed by statutory rules made by the Governor-in-Council. The rules prescribe both the conduct and responsibilities of staff at institutions and the supervision and care of prisoners. They take full account of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Prison rules - order and discipline in prisons

126. The statutory rules form an integral part of basic and in-service training for all staff of the Correctional Services Department. The rules are also accessible to prisoners in penal institutions. Upon admission to an institution, every prisoner/inmate receives an information booklet, explaining his rights and the rules and regulations of the penal establishments.

127. The rules also contain specific provisions concerning particular aspects of prison treatment. For example, in the interests of prison discipline and order, a prisoner may be ordered by the superintendent to perform labour in a cell. The superintendent must report the order to the Commissioner of Correctional Services. At the expiry of each month's confinement, the Commissioner must review the order and, if he considers it desirable, direct that the prisoner returns to work in association (Prison Rule 36).

128. The Superintendent may, for the maintenance of good order or discipline or in the interests of a prisoner, order the removal of a prisoner from association for a period of not more than 72 hours. The prisoner may make representations in respect of the removal to the superintendent who may, after considering the representations, arrange for him to resume association. The Commissioner of Correctional Services must appoint for each prison a board of review comprising the superintendent, the medical officer and such other suitable officer as he may select, to keep under review the progress of all prisoners removed from association and to make recommendations to the Commissioner as to their suitability for further removal or to be returned to association (Prison Rule 68B).

129. The rules prescribe in detail both the circumstances in which prisoners may be punished for offences against discipline and the offences themselves. The rules require that, where prisoners are to be charged, the charges must be laid as soon as possible; that prisoners must be informed of the charges as soon as possible and in any case before the charge is inquired into; and that the inquiry must begin not later than the next day (provided this is not a Sunday or public holiday). At the inquiry, prisoners must have the opportunity of presenting their own case. All adjudication must be conducted by the superintendent. The punishments which may be awarded are prescribed in the rules (forfeiture of privileges, stoppage of earnings, separate confinement with or without punishment, forfeiture of remission of sentence. Unconvicted detainees may also lose certain of their privileges.). The maximum period for which their punishments may be awarded is prescribed by the rules. Any prisoner aggrieved by a punishment awarded by the superintendent may appeal to the Commissioner of Correctional Services.

130. Rule 61 sets out offences against prison discipline, some of which, because of the nature and severity of the penalty imposed, can be classified as "criminal charges" within the meaning of article 10 of the Bill of Rights (art. 14 (1) of the Covenant). There is a proposal to abolish this type of disciplinary offence and, perhaps, to reduce the powers of the superintendent and the Commissioner of Correctional Services to impose forfeitures of remission; maximum periods of forfeiture would be reduced from two months to one month and from six months to three months, respectively. Another proposal under consideration is that the Secretary for Security should become an independent appellate body for prisoners who feel aggrieved by decisions of the Commissioner of Correctional Services. Amendments to the relevant legislation are being prepared. See also paragraph 162 below, under article 14 of the Covenant.

131. Rule 76 of the Prison Rules provides that any officer in the Correctional Services Department who, without lawful authority

(a) Makes any communication to any person whatsoever concerning a prison or prisoners; or

(b) Communicates to the public press information derived from official sources or connected with his duties or prison

commits a breach of confidence and shall be liable to dismissal. To satisfy the requirements of the BORO, the Hong Kong Government proposes deleting sub-rule 76 (b) and rewording sub-rule 76 (a) so that the restrictions on the disclosure of information by an officer of the Correctional Services Department relate only to information which would affect prison security or interfere with prisoners' privacy. In addition, sub-rules 239 (1) (e) (i), (ii) and (iii), which make it a disciplinary offence for prison staff to divulge any information obtained in their official capacity without authority, will be revoked, since there is already adequate provision on that matter in the Civil Service Regulations and the Official Secrets Act. The Hong Kong Government plans to introduce these amendments in late 1995.

Receipt and issue of letters by prisoners

132. Under Rule 47 of the Prison Rules, prisoners are allowed to receive an unlimited number of letters only from relatives or close friends. But in order to comply with the BORO, amendments will be made to lift this restriction. The limitation on the number of letters which prisoners are permitted to send out will also be relaxed. The Hong Kong Government plans to introduce these amendments in late 1995.

Rehabilitation of ex-prisoners

133. Studies of discharged prisoners and experience in the field of rehabilitation of offenders indicate that, without sufficient care and control, ex-prisoners may offend. In recognition of their post-release adjustment needs, a "post-release supervision scheme" has been proposed to provide assistance and guidance to certain categories of adult ex-prisoners to help them reintegrate into the community and discourage them from

reoffending. The Post-Release Supervision of Prisoners Ordinance was enacted on 31 May 1995. The Hong Kong Government will begin to implement the scheme in late 1995.

134. A Rehabilitation of Offenders (Amendment) Bill is being drafted with the aim of extending the range of sentences covered by the legislation. This will provide for the rehabilitation of more ex-prisoners. The Hong Kong Government intends to introduce the amendment bill into the Legislative Council in the 1995-1996 legislation session.

Rehabilitation of juvenile offenders

135. A pilot community service support scheme was introduced in late 1994 to help rehabilitate juvenile offenders through a community-based treatment programme. The programme provides structured day-training, such as social group work, community service projects, job training packages and counselling groups, to stimulate young offenders' interest in school or in work and to develop their social skills.

Prisoners' petitions and complaints

136. Prisoners in Hong Kong have the right to petition the Governor, or see visiting justices of the peace or visiting officers of the Government Secretariat, about any matter regarding prison treatment. In addition, they can complain to senior officers of the Correctional Services Department, the Complaints Investigation Unit of the Department, the Commissioner for Administrative Complaints (COMAC) or the Office of Members of the Legislative Council (OMLEGCO). All prisoners are informed of these avenues of complaint through information booklets, notices posted in the reception offices at the institutions and at interviews with officers of the Correctional Services Department. Staff of the Department are notified of these procedures in the Department's Standing Orders and in departmental circulars.

Separation of young offenders from adults in penal institutions

137. Young offenders are kept apart from adults at all times in all penal institutions. There are now two penal institutions to accommodate young male offenders and one to accommodate young female offenders. These provide half-day vocational training and half-day academic education. In the rare cases where it is necessary to admit young prisoners to adult prisons, they are kept separate from the adults.

Article 11

Imprisonment for non-fulfilment of contract

138. Nobody may be imprisoned in Hong Kong merely for failure to fulfil a contractual obligation (see art. 8 of the Bill of Rights). But in certain cases a judgement debtor may be sent to prison for wilful failure to comply with the judgement. Upon the application of a judgement creditor, the Supreme Court may, under Order 49B of the Rules of the Supreme Court (chap. 4, Subsidiary legislation), examine the judgement debtor. If it concludes that

the debtor is able to satisfy the judgement, wholly or partly; or has disposed of assets with a view to avoiding satisfaction of the judgement, wholly or partly; or has wilfully failed to make a full disclosure of his assets, liabilities, income and expenditure, the court may, in its discretion, order the imprisonment of the judgement debtor for a period not exceeding three months.

139. If the court concludes that the debtor is able or will be able to satisfy the judgement, wholly or partly, by instalments or otherwise, it may order him to satisfy the judgement in such manner as it thinks fit. However, if the debtor fails without cause to comply with the court order, he may be imprisoned for a period not exceeding three months.

140. When a judgement debtor is committed to prison, the court must fix whatever monthly allowance it may think sufficient for his support and maintenance, not exceeding $560 per diem. This must be paid by the judgement creditor by monthly payments in advance. All such sums are recoverable by the attachment and sale of the property of the judgement debtor.

Article 12

Liberty of movement and freedom to choose residence

141. Under article 8 (1) of the Bill of Rights, everyone lawfully in Hong Kong has the right to liberty of movement and freedom to choose his residence. Residents of Hong Kong are required to provide a residential address for administrative purposes, for example, when applying for social welfare. But there is no requirement for the registration of persons in a particular district.

Freedom to leave Hong Kong

142. Article 8 (2) of the Bill of Rights, corresponding to article 12 (2) of the Covenant, guarantees freedom to leave Hong Kong. Consistently with this, Hong Kong laws do not interfere with the right of a person to leave Hong Kong, except in the cases described in the following paragraphs, which fall within the exceptions envisaged by article 8 (3) of the Bill of Rights (corresponding to art. 12 (3) of the Covenant).

Employment Ordinance

143. Under section 67 of the Employment Ordinance (Cap. 57), if an employer or former employer is about to leave Hong Kong with intent to evade payment of wages or other monies owed by him under a contract of employment, his employees may apply to a district judge for a warrant ordering that the employer be apprehended and brought before a district judge. Judges will only issue such warrants if they are satisfied that there is probable cause for believing that the employer is about to leave Hong Kong with such intent. They may require the employer to enter a bond for his appearance in a court until he has paid to the employee the full amount of the debt.

Inland Revenue Ordinance

144. Section 77 of the Inland Revenue Ordinance (Cap. 112) provides that a district judge may issue a departure prevention direction to restrain any person from leaving Hong Kong if he has not paid, or furnished security for payment of, any tax due from him. The direction is only issued if the district judge is satisfied that there are reasonable grounds for believing that the person intends to depart and that it is in the public interest to issue the direction. The Ordinance was amended in July 1993 and now provides greater protection to freedom of movement. Under the old provision, district judges were required to issue directions without discretion, and the Commissioner of Inland Revenue could make applications without proof of any reasonable grounds for his belief that the persons in question were likely to leave Hong Kong without payment of tax due from them. The present provision enables persons aggrieved by such directions to appeal to the High Court to set aside or to suspend the directions. See also paragraph 161 below (under art. 14 of the Covenant).

Prevention of Bribery Ordinance (PBO) and Independent Commission Against Corruption (ICAC) Ordinance

145. Section 17A of the PBO provides that magistrates may, upon the application ex parte of the Commissioner of the ICAC, order persons who are under investigation in respect of offences alleged or suspected to have been committed by them to surrender their travel documents to the Commissioner. Section 17B provides that the persons affected have a right to apply to the Commissioner for the return of their travel documents: the Commissioner may accede to such a request, decline it or agree to it subject to the applicant's agreeing to certain conditions. Where the Commissioner refuses to return the travel documents or is prepared to do so only subject to conditions, the person affected may appeal to magistrates pursuant to section 17B (5). The magistrates may order the return of the documents absolutely or upon conditions.

146. These provisions were challenged before three magistrates. It was held that, while section 17A clearly limits the enjoyment of freedom of movement guaranteed by article 8 (2) of the Bill of Rights (art. 12 (2) of the Covenant), the power is nevertheless justifiable, provided that it is not exercised on the basis of the very low threshold of a mere allegation of the commission of an offence by a suspect. The power is akin in many respects to the issuing of search warrants, which are granted ex parte on the basis of reasonable suspicion. In order to bring the section in line with article 8 (2) of the Bill of Rights, the Hong Kong Government proposes replacing the phrase "alleged or suspected" in section 17A (1) by "reasonably suspected". This amendment is included in the bill now before the Legislative Council which is referred to in paragraph 23 above (under art. 2 of the Covenant).

Travel Agents Ordinance

147. Section 21 of the Travel Agents Ordinance (Cap. 218) empowers the Registrar of Travel Agents (the Registrar) to conduct an investigation into the business of a licensed travel agent, if he suspects that the business of

the travel agent is being carried on contrary to the public interest. Having decided to conduct an investigation under section 21, the Registrar may, under section 29 of the Ordinance, apply to a magistrate on an ex parte basis, by statement made on oath by the Registrar or an authorized officer, for a prohibition order to stop a person from leaving Hong Kong. Such an order will be issued where the magistrate is satisfied that:

(a) A person associated with the business of the travel agent under investigation is likely to be able to assist the Registrar in connection with that investigation;

(b) There are reasonable grounds for believing that that person intends to leave Hong Kong; and

(c) It is in the public interest to stop that person from leaving Hong Kong so that he can assist in the investigation of the travel agent.

148. Persons aggrieved by a prohibition order may appeal to the High Court under section 29 (10) of the Ordinance. The old section 29, which was replaced by the present section 29 in June 1994, did not give any discretion to the magistrate nor did it require any reasonable grounds to be shown for believing that the person in question intended to depart from Hong Kong. It thus constituted an unjustifiable limitation on freedom of movement.

Imprisonment of judgement debtors

149. Information on the Rules of the Supreme Court authorizing the imprisonment of judgement debtors in certain cases is given in paragraphs 138 to 140 above (under art. 11 of the Covenant).

Hong Kong travel documents

150. The Immigration Department issues British passports to all who are eligible for them and travel documents of the Hong Kong Government to all who cannot obtain travel documents from any other Government. No British passport holders have had their passports withdrawn.

151. Between 1991 and 1994, 1,989,298 British passports and 1,418,664 other travel documents (both renewals and fresh applications included) were issued. Applicants are refused British passports or other travel documents only if they do not meet the eligibility criteria. Any long-term resident of Hong Kong who cannot obtain a travel document from any other Government will be issued a Hong Kong travel document.

Lawful entry into Hong Kong

152. Consistently with article 8 (4) of the Bill of Rights (corresponding to art. 12.(4) of the Covenant), the Immigration Ordinance, chapter 115, provides that all permanent residents of Hong Kong and persons who have the right to land in Hong Kong (mostly British citizens who have resided in Hong Kong for seven years) have an absolute right to enter Hong Kong and to stay in Hong Kong free of conditions. They are not deportable. Aliens who have valid

visas or who are exempted from visa requirements and satisfy other basic entry criteria (for example, they have not previously had a deportation order issued against them) are accepted for entry. At present, the nationals of about 170 countries and territories may visit Hong Kong without visas. Those wishing to enter for employment or for study must obtain visas. Once lawfully admitted for residence, aliens are not subject to any restrictions on their movement within Hong Kong.

Article 13

Deportation and removal of undesirable immigrants

153. As stated in paragraph 152 above, a person who enjoys the right of abode in Hong Kong cannot be deported or removed from Hong Kong.

154. Immigrants may be deported by order of the Governor, but only if they have been convicted of a serious offence against the law or if the Governor deems their deportation to be conducive to the public good. Deportees have a statutory right to have their cases reviewed by the Governor-in-Council. Any person may make representations to the Governor before a deportation order is made and can appeal to the Governor after the order has been issued. Any person may petition the Governor for the suspension or rescission of a deportation order in force.

155. Immigrants who have not been ordinarily resident in Hong Kong for three years or more may be required by the Governor, by way of a removal order, to leave Hong Kong if the Governor considers them to be undesirable. By way of removal orders, the Director of Immigration may require persons to leave Hong Kong if they have remained in Hong Kong without permission, or if they have committed certain prescribed offences, or if they have been refused permission to land. There is a right of review in these cases. Any person may also petition the Governor in respect of such a removal order.

156. A deportation order prohibits the person concerned from returning to Hong Kong either for life or for the period specified in the order (but see para. 154 above as regards the possibility of a petition for rescission of the order). It is an offence to return to Hong Kong in breach of a deportation order. The effect of a removal order is less permanent. It does not prohibit the person concerned from returning to Hong Kong after the order has been executed.

157. Although it appears that considerable power is vested in executive authorities to deport or remove aliens, the power has always been used sparingly and on justifiable grounds. Between 1991 and 1994, 1,385 aliens were deported: all were deported after having been found guilty of an offence punishable with imprisonment for not less than two years and none were deported on the grounds that their deportation would be conducive to public good. Thirteen petitions against deportation were received; none was allowed. In the same period, 33 deportation orders previously issued were rescinded or suspended on exceptional grounds to enable the aliens concerned to enter Hong Kong. Of the 13,918 removal orders issued between 1991 and 1994, 84.9 per cent were issued for remaining in or entering Hong Kong without

permission; 12.4 per cent for committing immigration offences (such as breach of conditions of stay and overstaying); and 2.7 per cent were issued to persons whom it was necessary to remove after they had been refused landing. Of the 1,007 statutory appeals received, 89 were allowed.

158. Prior notice is given to aliens serving prison terms who are to be deported after their release, to allow them to prepare themselves for return to their own countries. Other aliens subject to removal orders are normally given between one and seven days notice to allow them to prepare for the return. Aliens who have submitted petitions or appeals against their deportation or removal orders are not required to leave until their petitions or appeals are decided and, if these are rejected, the requisite period of notice has been given to them. In every case, prior agreement with the country accepting the deportee or removee is sought.

Article 14

Discrimination against successful appellants under the Criminal Procedure Ordinance

159. In R v. Man Wai Keung (1992) II HKCLR 207, the Court of Appeal ruled that section 83XX (3) (a) of the Criminal Procedure Ordinance - which prevented an order for costs being made in favour of a successful appellant who was ordered to be retried - was inconsistent with the first sentence of article 10 of the Bill of Rights (corresponding to art. 14.1 of the Covenant) in that it discriminated against one class of successful appellant within the Court's jurisdiction. This provision was declared repealed to the extent of the inconsistency.

Appeal arrangements against administrative decisions

160. The Administrative Appeals Board was set up on 15 July 1994 under the Administrative Appeals Board Ordinance (Cap. 442) which provides an independent open statutory appeal system against a range of administrative decisions in line with article 10 of the Bill of Rights. At present, the Board is required to deal with appeals under 29 ordinances and its jurisdiction will be gradually expanded. Apart from the Administrative Appeals Board, there are also independent and impartial bodies specially constituted under different legislation to consider appeals of a special or technical nature.

Stop orders under the Inland Revenue Ordinance

161. In Commissioner of Inland Revenue v. Lee Lai Ping (1993) 3 HKPLR 141, a district court judge ruled that section 77 of the Inland Revenue Ordinance, which gave no discretion to a judge in issuing a stop order to prevent a defaulting taxpayer from leaving Hong Kong, was not consistent with article 10 of the Bill of Rights. Section 77 has since been amended to confer such a discretion and to provide for a full right of appeal. See also paragraph 144 above, under article 12 of the Covenant.

Criminal offences committed by prisoners

162. Prison Rule 61 prescribes offences for which prisoners may be subject to disciplinary action. But some of these - because of the nature and severity of the penalty imposed - are classifiable as criminal offences. In these circumstances, the Hong Kong Government accepts that, rather than being disciplined by the Commission of Correctional Services, prisoners charged with these offences should be tried at a fair and public hearing by an independent tribunal. Amendments are in process to remove the relevant sub-rules. Meanwhile, departmental instructions have been circulated to all penal establishments that they are no longer to be applied. See also paragraph 135 above, under article 10 of the Covenant.

Loitering - Crimes Ordinance

163. A detailed review of the Crimes Ordinance was conducted in 1991 to amend the Ordinance to remove any obvious inconsistencies with the BORO. An important recommendation was the repeal of section 160 (1) of the Crimes Ordinance (Cap. 160). This makes it an offence to loiter with the intent of committing an arrestable offence. The Government considered this recommendation but decided that deleting the section would deprive the police of an effective legal means to detect and prevent crime. In 1989, 402 people were charged under section 160 (1), of whom 276 were convicted; in 1990, 332 were charged and 211 were convicted. The loss of this effective crime prevention tool would cause serious public concern.

164. To overcome the difficulty, the section was amended in June 1992. The effect of the amendment is that the failure of a suspect to give a satisfactory explanation of his presence and behaviour now merely forms part of the evidence in the case. It does not, as it did previously, constitute an ingredient of the offence. There is now no question of the accused being compelled to answer questions; he will only be cautioned in the normal way that he does not have to say anything, but that anything he does say may be used in evidence.

165. The 1992 amendment also included a new requirement to prove "intent" to commit an arrestable offence. This makes it more difficult to secure convictions.

Presumption under Dangerous Drugs Ordinance

166. The presumption of innocence guaranteed by article 11 (1) of the Bill of Rights (art. 14.2 of the Covenant) has been the subject of considerable litigation. In R v. Sin Yau Ming [1992] 1 HKCLR 127, the Court of Appeal declared that certain mandatory presumptions contained in the Dangerous Drugs Ordinance were repealed by the BORO as being inconsistent with article 11 (1). In so doing, however, the Court accepted that a presumption could be consistent with the BORO if it was rational - in the sense that the fact to be presumed did rationally and realistically follow from the fact proved - and if it was a proportionate response to the problem being addressed. Subsequent decisions have applied this principle in respect of a number of statutory presumptions designed to facilitate the proof of criminal offences.

Sections 45 to 48 of the Dangerous Drugs Ordinance were amended in June 1992. These provisions were considered to be an unjustifiable infringement of the presumption of innocence.

Burden of proof under the Summary Offences Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance

167. In AG of Hong Kong v. Lee Kwong Kut and Lo Chak Man [1993] 3 WLR 319, the Privy Council gave further guidance on the effect of article 11 (1) of the Bill of Rights. There could be exceptions from the strict application of the fundamental rule that, throughout a trial, the burden was on the prosecution to prove the guilt of the defendant beyond reasonable doubt. Such exceptions hinged on the principle that the responsibility for showing the guilt of the defendant remained primarily that of the prosecution. A provision that the prosecution had to prove to the requisite standard the important elements of the offence but which "reasonably" imposed an onus on the defendant to establish a proviso or exemption or similar matter would not infringe the right, guaranteed by article 11 (1), to be presumed innocent until proved guilty according to law. In one case, the Privy Council ruled that section 30 of the Summary Offences Ordinance - which required a defendant to give a satisfactory explanation of how he came to be in possession of property reasonably suspended of having been stolen or unlawfully obtained - was inconsistent with article 11 (1) and had therefore been repealed. In another case, the Privy Council ruled that provisions in section 25 of the Drug Trafficking (Recovery of Proceeds) Ordinance were consistent with article 11 (1). Among other things, these provisions created a defence for a person charged with helping another to keep the benefit of drug trafficking and put the onus of proof of certain elements of that defence on him.

Burden of proof under the Prevention of Bribery Ordinance

168. In April 1995, the Court of Appeal ruled that sections 10 (1) and 10 (2) of the Prevention of Bribery Ordinance were consistent with the BORO. Section 10 (1) makes it an offence for Crown servants to maintain standards of living or to control assets incommensurate with their official emoluments. Section 10 (2) provides that closeness of relationship and other circumstances may be grounds for a presumption that assets in the name of another are under the control of the defendant. In the bill now before the Legislative Council (see para. 23 above under art. 2 of the Covenant), the Hong Kong Government proposes amending the section to provide a less stringent evidential presumption, less onerous to the defendant and consistent with the BORO.

Strict liability offences

169. The compatibility of strict liability offences (i.e. offences which do not require proof of intention, recklessness or knowledge on the part of the accused person) with the presumption of innocence (art. 11 (1) of the Bill of Rights: art. 14 (2) of the Covenant) and the right to personal liberty (art. 5 of the Bill of Rights: art. 9 of the Covenant) has been raised in courts. The legal position has been substantially clarified by the Court of Appeal in R v. Wang Shi Hung MA 989/93 and 604/94. According to the Court, the mere fact that an offence is one of strict liability does not mean that it

is inconsistent with the BORO. The first stage is to decide whether the offence is one of strict liability. In deciding this, the Court must apply rules of construction that are strongly disposed in favour of individual freedom. If an offence is nevertheless construed, having regard to the public interest, to be one of strict liability, then the offence will not be inconsistent with the BORO. This authoritative statement of legal principles has clarified the compatibility of strict liability offences with the BORO and hence the Covenant.

Bilingual charge forms

170. When the police lay charges against a person, they use a charge form, setting out his personal particulars and the offences for which he is charged. Such details are repeated in the charge sheet submitted by the police to the court. These documents are currently in English only. However, where necessary, police officers or police interpreters are available to inform the accused of the criminal charge laid against him in a language he understands.

171. The lack of bilingual charge forms and charge sheets has been criticized by members of the Legislative Council as being in contravention of the BORO, which stipulates that an accused person should be informed, in a language he understands, of the criminal charge against him. The Hong Kong Government considers that the current police practice of informing an accused of the charge through an interpreter is sufficient to fulfil the BORO obligation. But it has agreed to provide bilingual charge forms in English and Chinese, as the majority of the population is Chinese. However, this is difficult because not all the ordinances which provide for criminal charges have authenticated Chinese versions (see para. 172 below). A pilot scheme to introduce bilingual charge sheets was introduced in the Wong Tai Sin police station in April 1994. The scheme was initially confined to four ordinances which are most commonly used (the Crimes Ordinance, the Theft Ordinance, the Offences Against the Persons Ordinance and the Summary Offences Ordinance). A six-month review conducted by the police indicated that the pilot scheme was a success and the Hong Kong Government has decided to extend it to all police stations by late 1995.

172. The judiciary is committed to making the use of Chinese in courts generally available as an option by 30 June 1997. In the meantime, efforts are being made to introduce bilingual versions of court documents which are of direct concern to members of the public (such as summonses and bail forms).

Measures by the judiciary to reduce delays to criminal trials

173. In recent years, with the growth in both the volume and complexity of criminal cases before Hong Kong's courts, the normal waiting time for cases to come to trial has become longer. This has caused public concern. In 1994, the judiciary launched a number of measures in an effort to keep waiting times - particularly for criminal cases - within reasonable limits. As a result, court waiting times have improved significantly.

174. The measures were:

(a) Appointing a high-ranking Judiciary Administrator to assist the Chief Justice in the overall administration of the judiciary and to promote efficiently and a service-oriented culture within the judicial system;

(b) Providing a second running list in both the High Court and the District Court to speed up the trial of relatively short cases in which only one defendant who is legally aided is involved. These cases account for some 30 per cent of all criminal trials at these two tiers of the court system;

(c) Appointing a High Court Judge to take charge of the listing of criminal and civil cases in the High Court as part of an overall effort to maximize the efficiency of the listing system and to improve overall case management;

(d) Appointing a number of lawyers in private practice to the District Court as deputy district judges, each for about one month, to help shorten the waiting time for hearing cases. Similarly, temporary magistrates were appointed to handle the increasing caseload at the magistrates' courts;

(e) Introducing a pilot scheme in October 1994 for an audio recording and transcript production service for the District Court to relieve judges of the need to take hand-written notes of proceedings themselves, thereby speeding up the trial process and making the work of the District Court more efficient. In view of the scheme's success, it will be extended to all courts by 1997-1998; and

(f) Appointing judicial leaders at each level of the court system to promote efficiency.

The right to be tried without undue delay

175. Since the enactment of the BORO, a number of applications have been made to the court for a stay of proceedings on the ground of undue delay in the trial. The position has been authoritatively laid down by the Privy Council in AG v. Charles Cheung Wai Bun (1993) 3 HKPLR 62. According to the Privy Council, the general test, under the common law doctrine of abuse of process, for determining whether a stay should be granted for delay is that no stay should be granted unless the defendant shows on the balance of probabilities that, owing to the delay, no fair trial can be held. The Privy Council has recognized that any difference in the approach at common law and under the BORO is likely to be of significance in only a small minority of applications for stay.

176. The position has been further clarified by the Court of Appeal in R v. William Hung (1993) 3 HKPLR 328, where the Court of Appeal, following the approach of the Privy Council, has laid down a three-stage inquiry in undue delay cases:

(a) First, whether there has been undue delay in bringing the defendant to trial;

(b) If so, whether a stay is an appropriate and just remedy for the violation of the defendant's right that has taken place. The test to be applied, other than in exceptional cases, is that applicable at common law, namely whether delay has precluded a fair trial; and

(c) If not, whether the case is an exceptional one in the sense that a stay should be granted under the BORO even though a stay would not be granted under the common law.

177. The scope of protection against undue delay in trial under the domestic law has thus been settled.

Additional resources to cope with increasing workload

178. As a result of the growing volume and complexity of cases, the existing establishment of judicial officers in the High Court, the District Court and the Magistrates' Court is insufficient to handle the cases before them. This has resulted in unacceptably long waiting times. In order to reduce these, and to give earlier trial dates to litigants, the judiciary has created seven additional judicial posts and aims to create five more by the end of 1995.

179. The judiciary maintains court lists for specialist subjects, such as construction and arbitration, commercial matters, and personal injuries. These lists facilitate the efficient, flexible and cost-effective disposal of cases brought before the courts.

Efforts to promote wider use of Chinese in the courts

180. Hong Kong already has in place a legal framework for the use of Chinese in magistrates' courts and some tribunals. The Hong Kong Government is encouraging the wider use of Chinese in these courts and seeking to attract more local lawyers to join the bench.

181. In September 1994, the Chief Justice appointed a Steering Committee, under the chairmanship of a High Court Judge, to advise how the policy of increasing the use of Chinese in the higher courts should be implemented. The Steering Committee recommended that the Official Languages Ordinance should be amended to enable a judge (or other judicial officer) presiding over any court proceedings to use either English or Chinese. A party to, or witness in, any proceedings will be able to use either English or Chinese, or may address the court in any other language. A legal representative may use either English or Chinese in court proceedings. The Steering Committee also recommended an eight-phase implementation strategy to put in place a framework for the use of Chinese, along with English, in all judicial proceedings before 1 July 1997. The Hong Kong Government introduced enabling legislation into the Legislative Council in May 1995.

Right of access to legal system

182. Hong Kong's system of legal aid is discussed in paragraphs 41 to 46 of section A (General profile).

Separate representation of children in legal proceedings

183. Caseworkers on child welfare cases and child custody proceedings take full account of the Convention on the Rights of the Child. The views and wishes of the child involved are ascertained as far as practicable having regard to his or her age, maturity and circumstances. During the proceedings, the judge may ask for and ascertain the views of the child, or appoint the Official Solicitor to represent the child.

184. Under the Official Solicitor Ordinance, the Official Solicitor (who acts in his discretion or as appointed by the court) can act as guardian ad litem or act on behalf of children involved in proceedings under the Protection of Children and Juveniles Ordinance and the Matrimonial Causes Rules. Since September 1992, the Official Solicitor has been consulted on all overseas adoption cases to establish whether the children need legal representation in wardship proceedings. There are adequate provisions to provide representation for children before the law.

Protection of witnesses

185. The Hong Kong Government is committed to protecting individuals who are under threat because of their willingness to testify as witnesses in court. This commitment extends to the Vietnamese migrants in the detention centres. Against the background of Justice Kempster's 1993 "Report of the Commission of Enquiry into witness protection", 3/ the Hong Kong Government has reinforced the arrangements for the protection of Vietnamese migrant witnesses. It carefully considers all reports to the effect that such witnesses are subject to threat and, if necessary, arranges alternative accommodation for the individuals concerned.

186. The Hong Kong Government has implemented most of the recommendations of the Kempster report and the Fight Crime Committee's "Report on witness protection". This has entailed legislation to facilitate witnesses giving evidence at court using video-links, producing posters and information pamphlets to assure the public of their rights as witnesses, issuing case officer cards to improve communication between witnesses and case officers, and providing separate accommodation for witnesses in custody.

187. The police have also set up a "Central Witness Protection Unit" to formulate, coordinate and implement witness protection measures. The unit comprises 34 officers and 64 operational staff on reserve.

188. The Hong Kong Government undertakes to protect vulnerable witnesses as recommended in the report of the Committee on the Evidence of Children in Criminal Proceedings and the report of the Working Party on Mentally Handicapped People Giving Evidence in Court. To reduce the trauma suffered by children and mentally handicapped persons in giving evidence in court, bills amending the Criminal Procedure Ordinance and the Evidence Ordinance were introduced into the Legislative Council in May 1995. They are now under consideration by a Bills Committee. They will enable alleged child abuse victims and mentally handicapped persons to testify through live television link or video tape. And they will allow the acceptance of uncorroborated evidence from children in court. The Hong Kong Government has set up a task

force to review and strengthen the procedures for professionals handling child sexual abuse cases. The Social Welfare Department and the police have jointly organized a special training programme to give their social workers, police officers and clinical psychologists the knowledge and skills needed to video-record interviews with vulnerable witnesses.

Court of Final Appeal

189. Appeals from the courts of Hong Kong are currently made to the Privy Council in London, and this arrangement must cease upon the transfer of sovereignty on 1 July 1997. The Joint Declaration and the Basic Law provide that the power of final adjudication of the Hong Kong Special Administrative Region shall be vested in the Court of Final Appeal (CFA) of the Region. The Joint Declaration and the Basic Law also provide that, after the establishment of the Hong Kong Special Administrative Region, the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the establishment of the CFA.

190. In September 1991, the British and Chinese Governments agreed in the Joint Liaison Group (JLG) on the early establishment of the CFA in Hong Kong, including the composition of the Court. According to this agreement, the CFA would consist in each sitting of the Chief Justice, three permanent Hong Kong judges and one non-permanent judge, who could be from Hong Kong or from another common law jurisdiction. The Hong Kong Government handed a draft CFA bill to the Chinese side in May 1994. Following discussions between experts of the two sides, a five-point agreement was signed by the British and Chinese representatives on the JLG on 9 June 1995.

191. According to this agreement, the CFA will be established on 1 July 1997. But the preparatory work for its establishment will be carried out before then, so that, on 1 July 1997, the judges can be appointed, the Rules of Court can be made, and the Court can commence work immediately. The Judicial Committee of the Privy Council will retain its jurisdiction to hear appeals from Hong Kong until 30 June 1997, and will give priority to Hong Kong appeals in the months immediately prior to July 1997.

192. The agreement also provides that the CFA will be established in accordance with the Basic Law and the CFA Bill. The Bill is based on the established principles and practices of the Judicial Committee of the Privy Council. The CFA in Hong Kong will therefore exercise the same functions and jurisdiction as the Judicial Committee, subject to the provisions of the Basic Law. The CFA Bill was introduced into the Hong Kong Legislative Council on 14 June. The aim is to enact the Bill by the end of July. Once the CFA Bill is enacted, the British and Chinese Governments will discuss the modalities of their cooperation in setting up the CFA on 1 July 1997.

Article 15

Benefit of lighter penalty under new legislation

193. The Court of Appeal in R v. Lai Kai Ming (1993) 3 HKPLR 58 held that article 12 (1) of the Bill of Rights (corresponding to art. 15.1 of the Covenant) was not restricted to cases where the legislature had retained the

definition of an offence in its entirety and simply lessened the penalty by amendment. It also applied in cases where a later offence has replaced the earlier offence. In R v. Sze Yung Sang (1993) 3 HKPLR 211, the Court of Appeal held that where there has been an amendment to legislation, passed between the commission of an offence and the date of sentence, that reduces the maximum sentence for the offence, the offender should - according to article 12 (1) - benefit from that amendment and is to be sentenced in the light of the reduced penalty.

194. The Court of Appeal in R v. Chan Chuen Kam (1993) 2 HKCLR 144 decided that the benefit of the provision by law of a lighter penalty would only avail a defendant if both the BORO and that provision were in force when the sentence was imposed by the trial judge.

195. The Court of Appeal has developed two different approaches to the interpretation of article 12 (1) in respect of cases where two new offences were created to replace an old offence, one carrying a heavier penalty and the other a lighter penalty. In R v. Faisal (1993) 3 HKPLR 220, the Court of Appeal looked to the form of the old and the new offences. This approach was followed by the Court of Appeal in R v. Tai Yiu Wah Criminal Appeal No. 249 of 1993. In R v. Wan Siu Kei (1993) HKPLR 228 and R v. Chan Chi Hung (1993) 3 HKPLR 243, the Court of Appeal refused to follow R v. Faisal and considered it necessary to have regard to the underlying facts. An appeal to the Privy Council by the unsuccessful appellant in R v. Chan Chi Hung was heard in May 1995. The Privy Council has reserved its decision.

Article 16

Recognition as a person before the law

196. There is no change with regard to the implementation of article 16 of the Covenant from the position indicated in earlier reports to the Committee. Everybody in Hong Kong has the right to recognition as a person before the law. This right is formally guaranteed by article 13 of the Bill of Rights.

Article 17

Privacy protection for personal data

197. In April 1995, the Hong Kong Government introduced the Personal Data (Privacy) Bill into the Legislative Council. The Bill aims to protect the individual's right to privacy with respect to personal data. It implements most of the recommendations in the 1994 report of the Law Reform Commission (LRC) on the reform of the law relating to the protection of personal data. The LRC recommendations gave due regard to the results of a thorough public consultation exercise. A Bills Committee of the Legislative Council is currently studying the Bill in detail. Key features include giving statutory effect to internationally recognized data protection principles and the establishment of an independent regulatory authority to promote and enforce compliance with the legislation.

Investigatory power of the Securities and Futures Commission

198. In R v. Securities and Futures Commission, ex parte Lee Kwok Hung (1993) 3 HKPLR 39, it was argued that the powers of the investigator under section 33 (4) of the Securities and Futures Commission Ordinance (Cap. 24) to require the attendance of a person in order to provide information was an arbitrary and unlawful interference with his privacy. The Court of Appeal held that the provision was neither arbitrary nor unlawful, having regard to the need to balance the interests of the individual against society's requirements of a proper investigation under section 33 (4).

Interception of communications and intrusions into private premises

199. Having completed its examination of the law of privacy relating to personal data (see para. 197 above), the Law Reform Commission's Privacy Sub-Committee is examining the law with respect to the interception of communications, whether oral or recorded, and intrusion into private premises (by electronic or other means). The Sub-Committee expects to report in 1996.

200. Section 33 of the Telecommunication Ordinance and section 13 of the Post Office Ordinance provide for interception of telecommunications and mail respectively. There is criticism that the provisions are all-embracing and can easily be abused. The Government will take into account the recommendations of the Law Reform Commission when considering whether there is a need to amend the existing legislation.

Amendment to the Independent Commission Against Corruption Ordinance

201. Section 13 (1) (c) of the ICAC Ordinance empowered the Commissioner to require "any person" to provide him with "any information" which he considered necessary. It was repealed in May 1992 because, given its width, it seemed likely to permit an arbitrary interference with the right to privacy.

Amendments to the Police Force Ordinance

202. Attention is drawn to paragraphs 75 and 76 above under article 9 of the Covenant. The reforms discussed there were made with a view to the right to privacy as well as the right to liberty and security of the person.

Amendment to the Dangerous Drugs Ordinance

203. Section 52 of the Dangerous Drugs Ordinance was amended in October 1994 to restrict the power of entry and search of premises without warrant to situations where it would not be reasonably practicable to obtain a warrant. The section now empowers magistrates to issue search warrants to the police or the Customs and Excise Service on proof of reasonable suspicion that there are articles liable to seizure in the premises in question.

204. The old provision was ruled partly inconsistent with the right to privacy by a High Court judge in R v. Yu Yem Kin Criminal Case No. 111/93. The power of search of premises without warrant is unnecessary where there is little risk of disappearance of evidence and adequate time is available to obtain a

magistrate's warrant. The new provision strikes a realistic balance between law enforcement and privacy. A warrant is not required where it is not reasonably practicable to obtain one, for example, in an emergency situation.

Proposed amendment to Mental Health Regulations

205. Attention is drawn to paragraph 124 above (under art. 9 of the Covenant).

Proposed amendment to Prison Rules

206. Attention is drawn to paragraphs 131 and 132 above (under art. 10 of the Covenant).

Housing Ordinance

207. It has sometimes been suggested that section 22 of the Housing Ordinance - which authorizes officers of the Housing Authority to enter and inspect premises - infringes the right to privacy. It is true that the power is extensive, permitting, as it does, entry for inspection at any time. But the purpose of such inspections is to verify information given by families seeking or enjoying housing assistance provided by the Authority. To achieve this, some inspections must be held at irregular times of the day. Inspections are the only practical means of ensuring that the Authority's resources are fairly and duly deployed in accordance with the eligibility criteria of public housing schemes and the conditions for granting housing subsidy. The Authority has no intention of causing any inconvenience to those affected, or of infringing upon their privacy. Anyone who considers a particular inspection to have been an abuse of power can take legal action against the officer concerned or against the Authority.

Handing over of records of civil servants to the Special Administrative Region Government in 1997

208. Civil Service records are part of the Hong Kong Government archives. They will be retained in Hong Kong and passed via the United Kingdom Government and the Central People's Government to the Special Administrative Region Government upon the transfer of sovereignty. There will be no physical movement of the records.

Seizure of tax records

209. Like tax administrations the world over, staff of the Inland Revenue Department have powers, under the Inland Revenue Ordinance (IRO), to search and seize records where there are reasonable grounds for suspecting incorrect returns. The IRO contains ample safeguards against unauthorized disclosure of the confidential information. The reasons why these powers are given to tax administrations are obvious. There will always be taxpayers who file incorrect returns and seek to keep the true details of their income from the revenue authorities.

210. These powers are not exercised lightly or without due cause. An application for a search warrant requires, first, the personal authorization of the Commissioner of Inland Revenue. The application must be made to a magistrate who must be satisfied that there are reasonable grounds for

suspecting that a person has made an incorrect return or supplied false information, understating his profits. These powers are not exercised indiscriminately. Search warrants are usually sought in two situations. First, where the Department cannot obtain the relevant information upon request. Second, where it is unlikely that the taxpayer will willingly provide all records of income. If taxpayers comply with requests to provide information, no search is required.

211. Since 1 April 1992, the Department's Investigation Branch has completed some 1,800 cases and in that same period only 17 search warrants were obtained. Search warrants are the exception rather than the rule.

Article 18

Refusal to register a school

212. Section 14 (1) (m) of the Education Ordinance gave the Director of Education the power to refuse to register a school if the school was affiliated to or connected with or in any way controlled by a foreign government or a department of a foreign government or an organization or group of a political nature. This section was repealed on 4 June 1993 on the ground that the Education Ordinance was not an appropriate vehicle for restrictions of this kind.

Article 19

Review of legislation

213. In August 1992 the Hong Kong Government undertook a full review of legislation with the aim of identifying provisions which might infringe press freedom and, in a broader context, the right to freedom of expression. By December 1994, the review had covered 27 laws. It concluded that action would be required in respect of 16 ordinances, covering a wide range of areas such as broadcasting, public order and security. The rest were considered compatible with the BORO as they were designed either to protect an individual's right to privacy or the public interest.

214. Three ordinances relating to broadcasting were amended in 1993. These were the Television Ordinance, the Telecommunication Ordinance and the Broadcasting Authority Ordinance. Amendments to the Summary Offences Ordinance and the Public Order Ordinance were introduced into the Legislative Council in the 1993-94 session. In the 1994-95 session, the Government repealed the existing regulations under the Emergency Regulations Ordinance. It also introduced proposals to amend or repeal provisions in the Places of Public Entertainment Ordinance, the Registration of Local Newspapers, the Judicial Proceedings (Regulations of Reports), Defamation Ordinances, Police Force Ordinance and subsidiary legislation of the Television Ordinance. Amendments to several Prison Rules will also be introduced. All of these impose unnecessary restraints on freedom of expression. Further work in the area of broadcasting is planned for the 1995-96 session. Plans for the remaining provisions, including those in the Official Secrets Act, Crimes Ordinance, and Telecommunication Ordinance, are being finalized. Further details of these amendments are given below.

Power to revoke a licence under the Television Ordinance

215. Under the old section 14 of the Television Ordinance, the Governor-in-Council could order the Broadcasting Authority to conduct an inquiry and revoke the licence of a broadcasting organization after due notice had been given. The grounds for revocation included "the security of Hong Kong". This provision was amended in 1993. Under the new provision, the Governor-in-Council may revoke a licence after having considered the recommendation and other information submitted by the Broadcasting Authority (which is required to conduct a public inquiry in certain circumstances). "The security of Hong Kong" is no longer a ground for revocation.

Power to precensor and prohibit programmes under the Television Ordinance

216. Sections 35 and 36 of the Television Ordinance conferred upon the Broadcasting Authority a statutory power to precensor material before broadcast, and to prohibit the broadcasting of any television programmes and parts thereof. These powers were considered too sweeping and have been repealed. Section 33 of the Ordinance was amended in April 1993, giving the High Court authority to prevent in advance the broadcast of particularly offensive material that is likely to incite hatred against any group of persons defined by reference to race, sex, religion or ethnic origin; result in a general breakdown of law and order; or gravely damage public health or morals. A similar provision was added to the Telecommunication Ordinance (sect. 13M) which regulates radio broadcasting licensees.

Power to give directions to the Broadcasting Authority under the Television Ordinance

217. Section 29 of the Television Ordinance empowered the Governor-in-Council to give directions to the Broadcasting Authority regarding programme standards and the content of television broadcasts. In order to reinforce the autonomy of the Authority in such matters, this provision was repealed in April 1993. It was considered that the Broadcasting Authority, which comprises members from various sectors of the community, should have the unfettered power to regulate programme standards and content through the issue of Codes of Practice. A similar provision in the Broadcasting Authority Ordinance (sect. 18) in respect of sound broadcasts was also repealed. However, the Broadcasting Authority retains the power under section 34 of the Television Ordinance (as amended) to direct licensees to comply with the Ordinance's provisions - or those in any Code of Practice or any condition attached to a licence - on the content of programmes or advertisements.

Power to exclude certain material from broadcasts

218. Regulation 4 of the Television (Programmes) Regulations excludes certain material from being broadcast. The Hong Kong Government considers that this regulation may impose an unnecessary restriction on freedom of expression and may thus be inconsistent with the BORO. But the regulation was, anyway, effectively superseded by a last minute addition to the Television Ordinance (sect. 33) during passage of the Television (Amendment) Bill in 1993 and will be repealed within the current legislative session.

Power to approve advertisements for medical preparations on television

219. Regulation 6 of the Commercial Television (Advertising) Regulations requires the approval in writing of the Director of Health before advertisements for any medical preparation can be broadcast on television. There is criticism that the scope of the Director of Health's discretion is without limitation, is unnecessarily wide and could be used arbitrarily. The Hong Kong Government has reviewed the regulation and intends to repeal it within the current legislative session.

Power to prohibit the broadcasting of certain materials and programmes on radio

220. Section 13C of the Telecommunication Ordinance deals with prohibitions on the broadcasting of certain materials and programmes on radio. Under this provision, the Broadcasting Authority (via a licence condition) may require a licensee to "refrain from broadcasting any programme" which the Authority thinks would contravene directions issued by the Governor-in-Council or any regulation made under section 130. The Hong Kong Government intends to repeal this provision at the first opportunity in line with similar changes to the Television Ordinance (see para. 216 above).

Broadcasting news from approved sources under the Television (Programmes) Regulations

221. Regulation 5 of the Television (Programmes) Regulations previously required television licensees to broadcast news reports from sources or services approved by the Broadcasting Authority. In order to further safeguard freedom of information, this provision was repealed in April 1993.

Use of sound amplification devices in a public place, contrary to the Summary Offences Ordinance

222. Under section 4 (29) of the Summary Offences Ordinance, it is an offence punishable by a fine or imprisonment to use a megaphone or any other sound amplification device in a public place without obtaining the permission of the Commissioner of Police. The Hong Kong Government has reviewed this provision and concluded that section 5 (1) of the Noise Control Ordinance is adequate for the prevention of any nuisance caused by the improper use of loud hailers. Section 4 (29) is therefore no longer necessary and its repeal was included as a consequential amendment in the Public Order (Amendment) Bill 1994 which is being examined by the Legislative Council.

Power to control public entertainment events

223. The Secretary for Recreation and Culture proposes removing the power of the Commissioner for Television and Entertainment Licensing to control the form and content of public entertainment events by abolishing the need to obtain permits from him covering the contents of public entertainment. The Urban and Regional Councils (which run Hong Kong's parks, stadiums and concert halls), will continue to issue licences concerning the safety of the venue for public entertainment and of the participants. Amendments to the Places of Public Entertainment Ordinances were introduced into the Legislative Council

in May 1995 to give effect to this proposal. Objectionable live performances will continue to be controlled under section 12A of the Summary Offences Ordinance (Cap. 228).

Registrations of newspapers

224. Under Regulation 3 of the Newspapers Registration and Distribution Regulations and Regulation 4 of the News Agencies Registration Regulations, the Registrar had unfettered discretion to require particulars from applicants to register a local newspaper or news agency. In May 1995, legislative amendments were made restricting that discretion to specified information which is necessary for the purpose of identifying those responsible for the newspaper or news agency. The Regulations also provided that no documents, other than those forming an integral part of a newspaper, should be distributed without the consent of the Registrar. The Hong Kong Government considered this an unnecessary restriction on the right to freedom of expression and the relevant provision has been repealed.

Prisons Ordinance

225. As is explained in paragraph 131 above (under art. 10 of the Covenant), the Hong Kong Government proposes to introduce amendments to the Prison Rules in late 1995 so as to confine the present restrictions on the disclosure of information by staff of the Correctional Services Department to the disclosure of information which would affect prison security or interfere with prisoners' privacy.

Judicial Proceedings (Regulation of Reports) and Defamation Ordinances

226. Section 3 (1) (a) of the Judicial Proceedings (Regulation of Reports) Ordinance prohibits the publication of any indecent matter, or any medical, surgical, or physiological details of a revolting or offensive nature in relation to any judicial proceedings. A provision repealing this section is included in a bill introduced into the Legislative Council in May 1995. The bill is expected to be passed by the end of July 1995.

Defamation Ordinance

227. Under section 6 of the Defamation Ordinance, any person who maliciously publishes any defamatory libel is liable to imprisonment for one year and to pay such fines as the court may award. The Hong Kong Government now considers this unnecessary. Section 5, under which any person who maliciously publishes any defamatory libel, knowing it to be false, is liable to imprisonment for two years, is sufficient for the protection of reputations. An amendment to repeal section 6 was introduced into the Legislative Council in May 1995.

Official Secrets Acts

228. The Official Secrets Act 1989 (an Act of the United Kingdom Parliament), which repealed and replaced section 2 of the Official Secrets Act 1911, was extended to Hong Kong as from 30 June 1992 under the Official Secrets Act 1989 (Hong Kong) Order 1992. The remainder of the Official Secrets Act 1911 still

applies to Hong Kong, as do the Official Secrets Acts 1920 and 1939. All will cease to apply to Hong Kong after 30 June 1997. The options for dealing with this situation are being considered.

Crimes Ordinance

229. Provisions in the Crimes Ordinance relating to treason and sedition are also being reviewed, as they are predicated on British sovereignty.

Emergency Regulations Ordinance

230. As stated in paragraph 51 above - and consistent with the provisions of article 4 of the Convention - the Emergency Regulations Ordinance gives the Governor-in-Council powers to deal with a state of emergency or occasion of public danger. This includes the power to make regulations providing for censorship, for amending or suspending other enactments and for exercising control of essential services. As explained in paragraph 51, the Hong Kong Government repealed the existing regulations in June 1995.

Police Force Ordinance

231. In June 1995, the Hong Kong Government introduced the Interpretation and General Clauses (Amendment) Bill 1995 which contained provisions amending the Police Force Ordinance so as to restrict the statutory powers to enter premises for the purpose of searching for or seizing journalistic materials. This general restriction applies not only to the police, but also to other law enforcement agencies and government departments.

Telecommunication messages and mail

232. The Law Reform Commission is examining existing legislation on the interception of telecommunications and mail. The Hong Kong Government will take account of the Commission's recommendations in deciding whether it needs to amend relevant provisions in the Telecommunication Ordinance and the Post Office Ordinance.

233. Section 28 of the Telecommunication Ordinance makes it an offence to transmit, by telecommunication, a message known to be false. This is intended to implement article 36 of the Constitution of the International Telecommunication Union which obliges Hong Kong to take steps to prevent the transmission or circulation of false or deceptive distress, urgency, safety or identification signals. The current wording of section 28 is wider than is necessary for this particular purpose and will be amended to reflect more closely Hong Kong's obligations under article 36 of the ITU Constitution. The Hong Kong Government aims to introduce this amendment in the 1995-96 legislative session.

Prevention of Bribery Ordinance

234. Section 30 of the Prevention of Bribery Ordinance prohibits the details of an ongoing investigation by the Independent Commission Against Corruption (ICAC) being disclosed to any person without lawful authority or reasonable excuse. This provision was reviewed in the light of the BORO in 1992. As a

result, it was amended so that it is no longer an offence to disclose the identity of a person who is the subject of an investigation or the details of the investigation after that person has been arrested. However, section 30 is still considered by some to be an unnecessarily broad limitation on the freedom of expression. In 1994 the ICAC Review Committee examined section 30 as part of a wide-ranging review of the powers of the ICAC and recommended that it should be retained. Section 30 is now being challenged on BORO grounds in a court case involving a local newspaper. The Attorney-General is appealing against an initial judgement by a magistrate that the provision had been repealed by reason of its inconsistency with the BORO. The Appeal Court will hear the case on 5 July 1995. In the Bills Committee referred to in paragraph 23 above, a member has stated the intention, irrespective of the outcome of the appeal, of introducing a private member's bill to amend section 30.

Film classification system

235. All films intended for exhibition in Hong Kong must be submitted to the Television and Entertainment Licensing Authority for classification. Hong Kong has a three-tier film classification system which divides approved films into three categories:

Category I	Approved for exhibition to persons of any age;
Category II	Approved for exhibition, subject to the film being advertised as "not suitable for children"; and
Category III	Approved for exhibition to persons aged over 18 only.

236. The Film Censorship (Amendment) Ordinance 1993 extended the classification system to videotape and laserdisc versions of approved films. The publication of videotapes and laserdiscs containing films approved by the Film Censorship Authority for distribution is now controlled under the Film Censorship Ordinance.

237. An amendment bill is currently before the Legislative Council to refine the advisory Category II with the aim of giving more information to cinema-goers. The amendment does not carry additional restrictions on freedom of expression.

Film Censorship Ordinance

238. Section 10 (2) (c) of the Film Censorship Ordinance formerly required a censor to take into consideration the possibility of serious damage to good relations with other territories when a particular film was exhibited. The section was repealed in December 1994 as a result of a private member's bill.

Restrictions on cross-ownership of the media

239. Ownership restrictions apply to broadcasting licensees in Hong Kong as part of established Government policy. These statutory restrictions confine the level of control or interest which certain parties can exercise in Hong Kong's broadcasters. They also prohibit them from holding office in these broadcasters. They are imposed on public interest grounds to ensure

that no single operator can exercise too pervasive and powerful an influence over the media in Hong Kong: their purpose is to safeguard freedom and diversity of information. The present restrictions on cross-ownership apply only to the electronic media, but there is a plan to extend them to govern common ownership of the local television/radio licensees and daily newspapers.

The need for a public access channel and a public broadcasting channel

240. In May 1995, the Executive Council decided that proposals should not be pursued for either a public access service or a public broadcasting service.

Hong Kong Arts Development Council

241. In June 1995, the Hong Kong Government set up a statutory and independent Hong Kong Arts Development Council. Its statute provides that the Council's terms of reference include "upholding the principle and encouraging the freedom of artistic expression".

Access to information

242. In recent years, the Hong Kong Government has taken measures to improve public access to information. Since May 1993, a directory on the organization and functions of the Government Secretariat has been made available to the public. Major government departments, especially those which have frequent contact with the public, are encouraged to publish their own directory and annual reports. Since September 1993 the public have been able to have access to classified records older than 30 years, except for information which is particularly sensitive.

243. Over the past few years, advocates of the freedom of information have been campaigning for statutory rights of access to government information. In March 1994, a Legislative Councillor published a draft bill, for public consultation, on access to information.

244. In June 1994, the Hong Kong Government decided to adopt an administrative code on public access to government information. Work to develop the code began immediately and it was published in November 1994 to allow members of the Legislative Council and other outside organizations a chance to comment. The Code sets out the procedures for the release of information, as well as the criteria for withholding information. Under the Code, applicants may complain to the Commissioner for Administrative Complaints (COMAC) if they are not satisfied with the way the Code has been applied. The Code was introduced in March 1995, initially among selected government departments on a pilot scheme basis. The Hong Kong Government expects to implement the Code in full by the end of 1996.

Self-censorship and the case of Xi Yang

245. Self-censorship by the media has become an area of considerable concern, especially among journalists. A number of cases have been cited of apparent self-censorship by media companies and the press. The Hong Kong Government has repeatedly reaffirmed its commitment to press freedom, and its policy of maintaining an environment in which a free and active press can operate with a minimum of regulation which does not fetter freedom of expression or editorial

independence. The Hong Kong Government does not believe that it should intervene in matters of self-censorship or editorial independence. Ultimately, those working in the field of journalism must protect the integrity of their profession.

246. Concern over press freedom and self-censorship reached a high point in April 1994 when a Chinese court sentenced Ming Pao reporter Xi Yang to a 12-year jail term for "spying and stealing State secrets". In May 1994, the Legislative Council passed a motion urging the Chinese Government to release Xi Yang as soon as possible.

247. The United Kingdom and Hong Kong Governments recognize the widespread concern and anxieties over press freedom as a result of Xi Yang's case. They have conveyed to the Chinese Government their concern and the concern felt in Hong Kong and elsewhere, and have urged that clearer guidelines be produced for journalists working in China. They will continue to make their concerns known to the Chinese Government.

Article 20

Propaganda for war, etc.

248. In general, there is no change with regard to the implementation of article 20 of the Covenant from the position indicated in earlier reports to the Committee. Attention is drawn, however, to paragraph 216 above (under art. 19 of the Covenant) which reports the authority now vested in the High Court to prevent the broadcast, by television or radio, of particularly offensive material that is likely to incite hatred against any group of persons defined by reference to race, sex, religion, or ethnic origin or to result in a general breakdown of law and order.

Article 21

Review of the Public Order Ordinance

249. The provisions in the Public Order Ordinance relating to public meetings and processions have been criticized as inflexible and cumbersome. Some assert that certain provisions in the Ordinance are inconsistent with the BORO - article 17 of the Bill of Rights guarantees the right of peaceful assembly in terms exactly reflecting those of article 21 of the Covenant - and have called for their express repeal. At the same time, the police find it difficult to enforce the Ordinance's provisions on the regulation of public meetings and processions and no longer take strict enforcement action.

250. In these circumstances, the Public Order Ordinance has been reviewed and the Public Order (Amendment) Bill 1994 was introduced into the Legislative Council on 20 April 1994. It was drafted to recognize the right of peaceful assembly and at the same time to cater for wider interests, such as public order and safety. The principal effect of the Bill is to amend Part III (control of meetings, processions and gatherings) of the Pubic Order Ordinance by:

(a) Providing a simple notification procedure for public processions in place of the existing, more complex, system;

(b) Incorporating into the Ordinance, in modified form, the general conditions provided under the Public Order (Public Meetings) (General Conditions) Order (Cap. 245 sub. leg.); and

(c) Amending the grounds upon which the Commissioner of Police may prohibit, or impose conditions in respect of the holding of a notified meeting or procession (i.e. where he reasonably considers such prohibition or conditions to be in the interests of pubic safety or pubic order).

Amendment of the Summary Offence Ordinance

251. Section 8 (d) of the Summary Offences Ordinance provided that persons gathering at night without lawful excuse could be sentenced to three months imprisonment; any person who knew of such a gathering without giving immediate notice to the police was liable to a similar penalty. This section was criticized as being incompatible with the right of peaceful assembly and was repealed with effect from April 1995.

Organization of assemblies in housing estates

252. The Housing Authority and its staff deal with requests for assemblies in public housing estates in accordance with established guidelines. They do so impartially and do not, as critics have alleged, "selectively prohibit activities by organizations unpopular with the Authority or management".

253. The guidelines are:

(a) The Authority supports local organizations holding community-building activities, such as children's carnivals, festive celebrations, film shows, exhibitions and civic education programmes, in public housing estates;

(b) Applicants are encouraged to hold functions jointly with local mutual aid committees and residents' associations; and

(c) Activities should be held in locations which cause minimum disturbance or inconvenience to local residents. Activities which require audio-visual equipment or crowd control should take place in indoor venues such as community halls.

Organization of assemblies in venues managed by the Municipal Councils

254. The parks and playgrounds run by the Municipal Councils are often the only places available for rallies and other types of public meeting. Mainly for safety reasons, the Councils permit such activities only in certain designated venues. There have been criticisms that this is a restriction on the right to peaceful assembly, but the Hong Kong Government considers that this view is unfounded. In 1994, the Councils received 69 such applications and approved all of them.

Article 22

Freedom of association

255. Article 18 of the Bill of Rights, which exactly corresponds to article 22 of the Covenant, declares that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests". The following paragraphs describe the existing provisions of law in Hong Kong which both guarantee and - in a few necessary circumstances - restrict that freedom, and also provide more detailed information on some particular aspects of the enjoyment of the freedom of association.

Employment Ordinance

256. Section 21B (1) of the Employment Ordinance (Cap. 57) confers the following rights on employees:

(a) The right to be or to become members or officers of trade unions registered under the Trade Unions Ordinance;

(b) The right to take part in, at any appropriate time, the activities of the trade union of which they are members or officers;

(c) The right to associate with other persons for the purpose of forming or applying for the registration of a trade union.

Trade Unions Ordinance

257. The Trade Unions Ordinance provides that any combination of employees or employers which has the principal object of regulating relations between employees and employers, or between employees, or between employers must be registered with the Registrar of Trade Unions. It provides for the regulation of trade unions' internal administration and prescribes the freedom to strike and extends certain statutory immunities to registered trade unions. For example, a registered trade union is immune from any civil action in respect of certain acts done in furtherance of a trade dispute.

258. Section 17 (1) of the Ordinance provides that a member of a trade union should be engaged or employed in a trade, industry or occupation with which the trade union is directly concerned. Some trade unionists have said that this restricts freedom of association. The Hong Kong Government does not agree. The section does not restrict trade unions to any one particular trade or industry. Workers from different occupations, industries or trades may form unions of common interest. Indeed, there are a number of "multi-trade" unions such as the Clerical and Professional Employees Association and the Hong Kong White Collar Employees General Union.

259. Section 55 of the Trade Union Ordinance restricts the formation of trade union federations by requiring that each of the component trade unions is itself a registered union and that the members of each and all component unions are engaged or employed in the same trade, industry or occupation. This provision was enacted in 1961. Its purpose was to prevent essentially political organizations, with no genuine interest in their members' welfare, from registering as trade union federations. The Hong Kong Government also considers that this section is necessary to promote the formation of federations whose members share common interests.

Restriction on the right of traffic wardens to join trade unions

260. Traffic Wardens are under the authority of the Royal Hong Kong Police Force. Under section 59 (6) of the Road Traffic Ordinance, they must at present obtain the consent of the Commissioner of Police before they may join a trade union. The police have reviewed this provision and propose that it should be repealed in 1995.

Ban on members of the armed forces joining trade unions

261. There are no regular armed forces in Hong Kong other than those under the direct authority of the United Kingdom Government. Consistently with article 22.2 of the Covenant, members of those forces, including locally enlisted personnel, are not permitted to join trade unions by virtue of the regulations governing their own services.

Ban on members of the Police Force joining trade unions

262. Consistently with article 18 (2) of the Bill of Rights and article 22.2 of the Covenant, section 8 of the Police Force Ordinance (Cap. 232) prohibits members of the Royal Hong Kong Police Force from being members of trade unions. However, the Commissioner of Police may establish and recognize associations composed only of police officers. He may also seek the advice of any such associations in matters relating to the welfare and conditions of service of police officers.

263. There are no other specific groups of persons who are barred from forming or joining trade unions.

264. The Hong Kong Government does not and will not take legislative measures which would prejudice, or apply the law in such manner as to prejudice, the guarantees in International Labour Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise. Convention No. 87 applies to Hong Kong with modifications. The latest report on how Hong Kong applies the Convention was submitted to the International Labour Organization in 1994.

265. The number, membership and participation rate of trade unions in Hong Kong are as follow:

Number and membership of trade unions in Hong Kong

(As at 31 December 1994)

Economic sector	No. of unions	Declared membership
Agriculture, hunting, forestry and fishing	2	1 235
Mining and quarrying	-	
Manufacturing	93	67 100
Electricity, gas and water	10	5 317
Construction	23	18 397
Wholesale and retail trade, restaurants and hotels	35	50 059
Transport, storage and communication	79	87 995
Finance, insurance, real estate and business services	7	30 260
Community, social personal services	257	301 922
Total	506	562 285

Union participation rate in terms of salaried employees and wage earners	20.90%

Protection of workers who participate in industrial action

266. Workers who participate in industrial action are protected from anti-union discrimination and interference under Part IV A of the Employment Ordinance. Violation of its provisions is a criminal offence. The maximum penalty is a fine of $25,000. Following a review of labour relations, the Hong Kong Government is drafting legislation with a view to strengthening this protection. The intention is that employees dismissed on grounds of union membership or activities should be able to claim compensation from their employers through the Labour Tribunal. The burden of proving that dismissals are not discriminatory will rest with the employers.

Collective bargaining

267. There have been calls for legislation to enforce collective bargaining when the membership of a trade union reaches a prescribed percentage of the relevant work force. But the Hong Kong Government considers that this would

be impractical and inappropriate to Hong Kong's circumstances. Hong Kong has numerous trade unions, most of which have a relatively low participation rate. Small business establishments are the norm and there is high labour mobility. These conditions are not conducive to the development of collective bargaining on a formal and institutionalized basis. The Hong Kong Government therefore promotes collective bargaining on a voluntary basis. This approach is appropriate to local conditions and has served Hong Kong well, as demonstrated by the relatively low incidence of industrial action.

Registration of societies under the Societies Ordinance

268. The Societies Ordinance was amended in 1992 to ensure consistency with the BORO. Previously, all societies in Hong Kong had to be registered, or specifically exempted from registration, to gain lawful status. This arrangement was considered incompatible with the right to freedom of association protected under article 18 of the Bill of Rights and article 22 of the Covenant because:

(a) It rendered a registrable association unlawful simply through failure to register; and

(b) The grounds on which a society could be refused registration were too widely drawn.

269. The amendments have replaced the registration system with a notification system. Persons can now form a society freely, subject only to a requirement to notify the Societies Officer of its existence. They do not have to submit as much information on notification as was required under the registration system. Triads and other societies prohibited by the Secretary for Security remain unlawful. The Secretary for Security may prohibit the operation of a society if he believes that such operation will be prejudicial to the security of Hong Kong, public safety or public order. This balances the right to freedom of association against the wider public interests recognized in article 22.2 of the Covenant and article 18 (2) of the Bill of Rights. As at 31 December 1994, some 5,582 societies were notified under the Societies Ordinance. None has been declared unlawful or has been prosecuted.

Article 23

The family - a vital component of society

270. The rights relating to the family that are declared by article 23 of the Covenant are guaranteed in Hong Kong by article 19 of the Bill of Rights. As stated in the White Paper on "Social Welfare into the 1990s and Beyond", the Hong Kong Government considers the family to be a vital component of society. It provides an intimate environment in which physical care, mutual support and emotional security foster the healthy development of children. The family can be an important source of support and strength for the infirm, the elderly, the disable and the delinquent.

271. In Hong Kong, that kind of support has hitherto been largely provided by the traditional Chinese extended family with three or more generations living under one roof. But rapid urbanization, the emergence of new towns and the

influence of the West have contributed to the demise of extended families. Nuclear families comprising parents and children with an average household size of three to four people are increasingly the social norm.

272. The numbers of single parents and unmarried couples are also increasing. This is largely due to the rising rate of divorces and separations, arising from changing attitudes to marriage, cohabitation, and the role and status of women.

Welfare policy towards families

273. Hong Kong's family welfare policy is to preserve and strengthen the family as a basic social unit. The family should be able to discharge its caring and protective function for its members. Family counselling, including marriage counselling, mediation and guidance on good parenting, is provided to married couples and family members at 62 family service centres. Family support services such as the home help service, the family aid service, psychological counselling, temporary shelters for battered women, compassionate rehousing for needy families, child-care service and residential services for children are also provided and will be expanded to meet better the needs of families. The policy does not discriminate between types of family; the essential criterion for support is that of need.

Guardianship of minors

274. When a marriage has broken down and divorce has become inevitable, the Social Welfare Department provides counselling, referrals for assistance and advice on matters relating to divorce and child custody. If a dispute over child custody occurs, the Child Custody Services Unit of the Department offers assistance upon receipt of referrals from the court under the Matrimonial Causes Ordinance and the Guardianship of Minors Ordinance. It also makes recommendations to the judge on the custody, access arrangement, guardianship and maintenance of the children. Occasionally, in the course of divorce proceedings, the courts consider it desirable for children of the parties to be under the supervision of an independent person in order to safeguard their welfare. In these circumstances, they may order that the children be under the supervision of the Director of Social Welfare. Once a court has made such an order, caseworkers from the Child Custody Services Unit will undertake the necessary supervision.

275. Where the parents of a child cannot be traced and the child is being cared for by another person (whether a relative or not) who wishes to obtain an order for custody, access, or maintenance, section 10 of the Guardianship of Minors Ordinance empowers the Director of Social Welfare to apply to the District Court or the High Court for such an order.

Rights in respect of marriage

276. The right of men and women to enter into monogamous marriage with their full and free consent is guaranteed under the Marriage Ordinance (Cap. 181). Bigamy was rendered illegal with effect from 7 October 1971 by the Marriage Reform Ordinance.

277. Before 1990, the Marriage Ordinance provided that the age at which people could marry was 16, and parental consent was required if the person intending to marry was under 21. A person under the age of 21 who had been refused consent to marry by a parent or guardian could not marry. In 1990, section 18 A of the Marriage Ordinance was added, following the enactment of the Age of Majority (Related Provisions) Ordinance, and now provides that, where consent has been withheld by a parent or guardian, a district judge may, on application being made, consent to the marriage and his consent shall have the same effect as if it had been given by the person refusing consent.

278. In 1991, these measures were further strengthened by article 19 (2) of the Bill of Rights which recognizes the right of men and women of marriageable age to marry and find a family. Article 19 (3) states that no marriage shall be entered into without the free and full consent of the intending spouses.

279. Under section 14 of the Marriage Ordinance, only fathers may consent to the marriages of any of their children between 16 and 21. Mothers may only give that consent where the fathers are either dead or insane. To remove the discriminatory elements, and to maintain adequate safeguards to protect adolescents from the consequences of marrying too early, consideration is being given to requiring the consent of both parents in marriages of persons who required parental consent. Consideration is also being given to lowering the marriage age without parental consent from 21 to 18.

Divorce - amendment of the Matrimonial Causes Ordinance

280. Based on recommendations of the Law Reform Commission, amendments to the Matrimonial Causes Ordinance were enacted in May 1995. The amendments bring the law of divorce more into line with prevailing community attitudes and aim to minimize the distress, hardship and acrimony of divorce proceedings. The main amendments include reducing minimum separation periods before divorce petitions can be filed, shortening the time restriction on divorce early in marriage, and introducing a new procedure of divorce by joint application.

281. Other amendments remove provisions in the Ordinance which provided for differential treatment of men and women. The provisions concerned the definition of "dependants", the jurisdiction of the courts and the citation of co-respondents in divorce proceedings. The amending legislation will be brought into effect when consequential amendments to the rules governing court procedures have been made.

Immigration from China for family reunion

282. It is not Hong Kong's policy to separate families. It accepts nearly 40,000 immigrants a year, which is a significant number considering Hong Kong's size and population. The main source of immigrants is China. Over 90 per cent of them come to Hong Kong for family reunion. The responsibility for approving individual applications for immigration to Hong Kong rests with the Chinese Government. In November 1994, the case of a child removed to China - because his family could not prove that he was born in Hong Kong - was raised during the examination of the second periodic report in respect of Hong Kong on certain of the articles of the International

Covenant on Economic, Social and Cultural Rights. In February 1995, the Chinese authorities issued the necessary "one-way permit" and the child returned to Hong Kong.

283. Despite Hong Kong's acceptance of large numbers of immigrants from China, the number of persons seeking entry for family reunion remains high. It is estimated that there are about 300,000 to 400,000 persons in China with family connections in Hong Kong (not just children, but also spouses, brothers, sisters or more distant relatives - and also family members according to the Chinese concept of a family). Many of these belong to nuclear families split across the border. The number of split families remain high because not all the members of the same family receive approval to come to Hong Kong at the same time. Approval is given on an individual basis. The increased incidence of cross-border marriages between Hong Kong men and Chinese women also adds to the pressure. Because of the large number of persons in the queue waiting for entry into Hong Kong, wives of Hong Kong men have to wait for a number of years to join their husbands. Meanwhile, the family is expanded by the birth of children. Generally speaking, these children do not have an automatic right of abode in Hong Kong unless one of their parents is a British Dependent Territory citizen. In most cases the parents do not have that status (since many of them were once immigrants from China). But, after 1997, children born outside Hong Kong will have the right of abode if, at the time of their birth, at least one of their parents is a Hong Kong permanent resident.

Illegal immigrants from China

284. Because of the large number of persons in the queue, many persons attempt to enter Hong Kong illegally. The authorities arrest an average of nearly 80 illegal immigrants each day. In some cases, the illegal immigrants are children whom their parents have arranged to be smuggled into Hong Kong or the wives of Hong Kong men. The Hong Kong Government's policy is to repatriate all illegal immigrants to China. It is not possible to adopt a more lenient policy towards illegal immigrant children or women with husbands in Hong Kong, because it would be unfair to those who are waiting patiently in China for their turn to come to Hong Kong and would encourage more smuggling. This would not only be a serious contravention of the law but would also disrupt the entire system of legal immigration into Hong Kong, making it impossible for Hong Kong's population to grow at a controllable rate and for its social services to cope with the growth. Hong Kong's immigration policy seeks to enable family reunion to take place in a lawful, and tolerable, manner.

Problem of pregnant tourists from China giving birth in Hong Kong

285. The problem of split families also arises from women living in mainland China coming to Hong Kong to give birth. In most cases, these are the mainland wives of Hong Kong residents who come to the territory on two-way visit permits and give birth while they are there. The family then chooses to let the child stay with the father in Hong Kong. The issue has been discussed with the Chinese Government which has agreed to scrutinize applications more carefully before issuing permits, in an attempt to prevent women in the late stages of pregnancy seeking to enter Hong Kong. But difficulties remain.

This is because there is a large demand for permits and the waiting time to get one can be as long as two years. It is not desirable to turn away those who have successfully applied simply because they are pregnant; nor is it reasonable to change the residence rules so as to refuse residence to children whose fathers are, but whose mothers are not, Hong Kong residents.

Differences between Hong Kong law and the Basic Law in respect of the right of abode

286. Existing Hong Kong law and the Basic Law of the Hong Kong Special Administrative Region define Hong Kong permanent residents in different ways. As a result, certain categories of persons who do not now have the right of abode in Hong Kong will have that right after 1997 when the Basic Law comes into force. One such category comprises children born outside Hong Kong who, at the time of their birth, have one parent who is a permanent resident of Hong Kong. It was estimated at the end of 1994 that there were then about 64,000 children in this category in China. (The number of such children in other countries is minimal.)

Increasing the immigration quota from China

287. A sudden influx of all these children into Hong Kong in 1997 would place unmanageable demands on Hong Kong's social services. To avoid this, the Hong Kong Government has begun to bring in these children in a gradual manner. In May 1995, the Hong Kong and Chinese Governments agreed to further increase the daily one-way quota by the addition of 45 permits, making a total of 150 a day. Of the additional 45 permits, 30 will be allocated to these children and 15 to persons separated from their spouses in Hong Kong for 10 years or more. In determining the level of the increase, the Government took full account of Hong Kong's capacity - in terms of education, housing and other social resources - to absorb the additional numbers.

Article 24

Rights of children: general

288. The rights declared in article 24.1 and article 24.2 of the Covenant are guaranteed in Hong Kong by article 20 of the Bill of Rights. The following paragraphs give more detailed information concerning the implementation of those rights. As explained in paragraph 46 above (under art. 3 of the Covenant), the law in force in Hong Kong (as in all British dependent territories) governing nationality is the law of the United Kingdom - specifically, the British Nationality Act 1981 - and it is this law which implements the right declared by article 24.3 of the Covenant.

Extension of the Convention on the Rights of the Child to Hong Kong

289. The Convention on the Rights of the Child was extended to Hong Kong in 1994. The territory has a comprehensive network of legislation, and child welfare and professional services, dedicated to protecting the rights of children and promoting their interests. Some members of the community have advocated the introduction of a discrete "Children's Act". The Hong Kong

Government considers that the existing provisions provide an adequate framework and proposes instead to focus its efforts on implementing the existing provisions and improving them where necessary.

The policy framework

290. As indicated in paragraph 270 above (under art. 23 of the Covenant), the Hong Kong Government's child welfare policy is set out in the 1991 White Paper "Social Welfare into the 1990s and Beyond". That policy is to support and strengthen families so that they may provide a suitable environment for the physical, emotional and social development of their children. The primary responsibility for the adequate care of children rests with parents. But the Hong Kong Government will assist disadvantaged and vulnerable children whose parents cannot look after them. Society has an obligation to protect children from all forms of maltreatment and to provide services for the prevention and treatment of abuse. Accordingly, the law prescribes minimum standards for the care, support, education and protection of children. For example, the Protection of Children and Juveniles Ordinance defines the conditions under which children will be considered in need of care or protection, and the Child Care Centres Ordinance sets standards and requirements for services provided in such centres.

291. Some members of the community have proposed the creation of an independent children's commission. The Hong Kong Government considers this unnecessary and undesirable because:

(a) Government departments already work closely together to formulate and implement policies affecting children;

(b) The range of policies and services affecting children is too wide for a single committee to manage; and

(c) Existing advisory committees and working groups provide effective channels of communication for those involved in child policy and services.

Protection of the rights of illegitimate children

292. The Parent and Child Ordinance (enacted in 1993) sought to remove, as far as was practicable, the legal disadvantages previously suffered by illegitimate children. Various consequential amendments were also made to enable children born out of wedlock to enjoy the same rights as legitimate children, such as the right to maintenance and succession to the property of their fathers.

Day-care services

293. There is an increasing need for day-care facilities for young children whose parents cannot care for them during the day. Recognizing this, the Hong Kong Government has provided more day-care places. Additionally, it has extended the operating hours of some child-care centres and increased the number of occasional child-care places.

294. A total of 5,600 additional day-care places will be provided between 1993 and 1997. The process began in October 1994, when the operating hours of some aided day nurseries were extended and the first of the new places were provided. The number of occasional child-care units (each of which comprises three places) will increase from 135 in 1994-1995 to 235 in 1996-1997.

Residential child-care services

295. The residential child-care service provides supervision and care for vulnerable children and young persons who cannot adequately be looked after by their families. Preference is given to non-institutional care in the form of foster homes or small group homes. The underlying principle is that children are best cared for in a home-like environment with support from family members and the community.

296. Where necessary, legal guardianship is assumed by the Director of Social Welfare. In considering out-of-home placement, caseworkers conduct regular case reviews to safeguard the interests of children in care. When children are removed from their biological parents and cannot return home, the Director takes urgent steps to place them in the permanent care of responsible and caring extended family members or other relatives. Failing that, he seeks to find permanent homes through legal adoption.

Financial assistance to children

297. In November 1991, the Hong Kong Government introduced a "child supplement" to help children on public assistance to meet extra costs of food and for recreational activities. In July 1993, the Public Assistance Scheme was replaced by the Comprehensive Social Security Assistance Scheme. The Child Supplement was subsumed under the standard rates payable to different categories of children on financial assistance. A real increase ranging from 4 per cent to 14 per cent was also approved for different standard rates. In addition, a range of special grants is available to families with children, to pay for reference books, text books, stationery, school uniforms and after-school-care programmes. There is also a meal allowance for children attending full-day (as opposed to half-day) schools.

298. Despite continuous improvement measures, there have been calls for a higher level of social security benefits for children. In response, the Hong Kong Government increased the standard rates for children under the Comprehensive Social Security Assistance Scheme by HK$100 per month in April 1994 and by a further HK$205 per month in April 1995.

Protection and care of children

299. In recent years, increased publicity and public education have resulted in an increase in the number of reported incidents of children being left unattended, neglected or abused. The Child Protective Services Unit of the Social Welfare Department is dedicated to providing protection and services to these children. Further efforts will be made to identify and prevent these problems. The problem of child abuse will be tackled through continuous

education and through legislation. Statutory provisions for handling child abuse are contained in the Protection of Children and Juveniles Ordinance, formerly known as the Protection of Women and Juveniles Ordinance. In addition, the Hong Kong Government is preparing other legislative measures to prohibit unsuitable persons from acting as child-minders and is amending the Child Care Centres Ordinance to improve the quality of care in child-care services.

300. Major amendments to the Protection of Women and Juveniles Ordinance made in November 1993 included:

(a) Widening the circumstances in which children and juveniles are considered to be in need of care or protection. They now encompass suspected child abuse, psychological abuse, sexual abuse and neglect;

(b) Providing a new child assessment procedure whereby a child assessment notice can be served on a person to require him to take a child or a juvenile who appears to be in need of care or protection for assessment by a medical practitioner, a social worker or a clinical psychologist. The notice also requires that person to remove the child or the juvenile to a place of refuge or other appropriate place;

(c) Shortening the time limit from 8 days to 48 hours for bringing children or juveniles before a court for care or protection orders after their removal to places of refuge; and

(d) Removing all specific references to female infants or women so that the Ordinance applies equally to all children and juveniles in need of care or protection.

301. The Hong Kong Government has produced a manual on the "Procedures for handling child abuse cases" to streamline the handling of such cases. Multidisciplinary case conferences are convened to formulate welfare plans for the children involved. Participants include social workers, medical practitioners, police, teachers, school social workers, child-care workers, etc. The paramount concern is to protect the interest of the child.

Treatment of the abuser

302. Counselling, family and individual therapy, parenting guidance and skills training, and a wide range of community services are available for child abusers. Following a recent review, the Hong Kong Government intends proposing amendments to the Offences Against the Person Ordinance. These will seek to increase the maximum penalties for the ill-treatment and neglect of children.

303. The 1991 White Paper set targets for improving various family welfare services. To meet these targets, family counselling services were expanded in 1994-1995 to achieve an improved manning ratio. Other additional provisions in 1994-1995 included 27 small group homes, 80 foster care places, 1,400 aided day nursery places, 292 aided day creche places, 16 home help

teams, 18 family aid workers, 60 occasional child-care units and 11 clinical psychologists. At the same time, the Hong Kong Government introduced new services such as 19 "Family activity and resource centres" and a "Family care demonstration and resource centre". Improvement and expansion of family and child welfare services as well as preventive work through family life education will continue through the 1990s.

Review of the Adoption Ordinance

304. In the course of a review of the Adoption Ordinance, the Hong Kong Government is examining various areas for possible improvement. These include the right of adopted children to have access to their birth records and the possibility of shortening the period (currently six weeks) during which mothers may not relinquish their children for adoption. The Hong Kong Government intends to complete the review by the end of 1995.

Registration of birth

305. The Births and Deaths Registration Ordinance provides that the particulars of any child born alive in Hong Kong must be registered within 42 days of the birth. If no one registers the birth within 42 days, it is the duty of the Registrar to procure by all means in his power the best and most accurate information respecting the birth and to register it accordingly.

306. The particulars required to be registered include the date of the birth, the sex of the child, the name of the child if given at the time of registration, the name and surname of the father and the name and maiden surname of the mother, and the description and residence of the informant. However, in the case of an illegitimate child no person is required, as the father of the child, to give information concerning its birth, and the register does not show the name of any person as the father except:

(a) At the joint request of the mother and the person stating himself to be the father; or

(b) At the request of the mother on production of:

(i) A declaration made by the mother stating that that person is the father; and

(ii) A statutory declaration made by that person stating himself to be the father; or

(c) At the request of that person on production of:

(i) A declaration by that person stating himself to be the father; and

(ii) A statutory declaration made by the mother stating that that person is the father; or

(d) At the request of the mother or that person on production of:

(i) A certified copy of a relevant order; and

(ii) If the child has attained the age of 16 years, the written consent of the child to the registration of that person as his father.

307. These provisions were introduced by the Parent and Child Ordinance to reflect the Law Reform Commission's recommendation that "every effort should be made to remove the stigma which may attach to a child who cannot produce a birth certificate which identifies his father".

Article 25

308. The right and opportunity, without discrimination and without unreasonable restrictions, to take part in the conduct of public affairs, to vote and be elected in democratically conducted elections and to have access, on terms of equality, to public services, which is set out in article 25 of the Covenant as applied to Hong Kong, is guaranteed by article 21 of the Bill of Rights. The following paragraphs describe more fully how the enjoyment of that right is secured in practice. In some respects these paragraphs repeat - but do so in greater detail and in a way more specifically related to article 25 of the Covenant - information that is also to be found in section A (General profile).

Executive Council

309. The Governor presides over the Executive Council. In February 1995, the Council comprised three ex officio members - the Chief Secretary, the Financial Secretary and the Attorney-General - and 10 other members, including one official, appointed by the Governor with the approval of the Secretary of State.

310. The Royal Instructions (which, with the Letters Patent, form the written Constitution of Hong Kong) require the Governor to consult the Council on all important matters of policy. The Governor-in-Council (i.e. the Governor acting after consulting the Executive Council) is Hong Kong's central and highest executive authority on policy matters. In addition to policy matters, the Governor-in-Council determines appeals, petitions and objections under those Ordinances which confer a statutory right of appeal to the Governor. It also considers all principal legislation before it is introduced into the Legislative Council and is responsible for making some subsidiary legislation. The Council's advice on matters of policy involving the expenditure of public funds is subject to the approval of the necessary funds by the Legislative Council.

Arrangements for the 1994 and 1995 elections

311. The best guarantee of Hong Kong's prosperity and stability, both before and after 1997, is to protect its way of life. An integral part of that is the participation of individual members of the public in the conduct of Hong Kong affairs. The Joint Declaration provides that the legislature of

Hong Kong in July 1997 "shall be constituted by elections". The basic Law envisages the same. Elections have to be fair and open if there is to be a credible Legislative Council capable of safeguarding the rule of law and Hong Kong's way of life as set out in the Joint Declaration.

312. In October 1992, the Hong Kong Government announced proposals for the electoral arrangements of the 1994 District Board elections and the 1995 Municipal Council and Legislative Council elections. The proposals reconciled the clear wish of the community for further movement towards democracy, by way of a more open and fairer election system, with the equally strong interest in legislative arrangements capable of enduring beyond 1997. They were fully compatible with the Joint Declaration, the basic Law and any relevant agreements between the United Kingdom and China.

313. The Hong Kong Government had hoped to introduce legislation implementing these proposals on the basis of an agreement with the Chinese Government. However, despite 17 rounds of talks beginning in April 1993, both sides were unable to reach agreement. By December 1993, because of the legislative timetable, it was necessary to proceed with legislation on the more urgent and straightforward issues. Draft legislation (the First Stage Bill) was passed unamended by the Legislative Council in February 1994. Its provisions included:

(a) Lowering the voting age to 18 for all three tiers of elections;

(b) Adopting the single-seat, single-vote method for the Legislative Council, Municipal Council and District Board geographical constituency elections;

(c) Abolishing appointed District Board and Municipal Council membership;

(d) Increasing the number of elected Municipal Council seats (from 15 to 32 for the Urban Council, from 12 to 27 for the Regional Council); and

(e) Taking account of a proposal made by the Chinese Government during the talks to remove the prohibition on deputies of Chinese People's Congresses serving on the Legislative Council, the Municipal Councils and the District Boards.

314. Draft legislation on the more complex issues (the Second Stage Bill) was passed in July 1994. Its main features were:

(a) To create nine new Legislative Council functional constituencies: (i) primary production, power and construction, (ii) textiles and garments (iii) manufacturing, (iv) import and export, (v) wholesale and retail, (vi) hotels and catering, (vii) transport and communication, (viii) financing, insurance, real estate and business services and (ix) community, social and personal services;

(b) To expand the franchise of five existing professional functional constituencies: (i) social service, (ii) teaching, (iii) health care, (iv) architectural, surveying and planning, and (v) tourism;

(c) To abolish all forms of corporate voting in the functional constituencies and to replace them by individual voting; and

(d) To establish an election committee to elect 10 Legislative Council Members. The election committee would comprise all elected District Board members. Candidature for the 10 Legislative Council seats would be open to all electors registered in the General Electoral Roll.

The 9 new functional constituencies, together with the existing 21 functional constituencies, will cover the entire working population of 2.9 million.

315. Legislative Council members proposed several changes to the delineation of the functional constituencies. A private member's bill was also put forward proposing that all 60 seats for the 1995 Legislative Council should be elected from geographical constituencies. These proposals were defeated.

The general electoral roll

316. Elections to the Legislative Council geographical constituencies, Municipal Councils and District Boards are on a broad franchise. Practically everyone aged 18 or over who is a Hong Kong permanent resident or has ordinarily resided in Hong Kong for the immediately preceding seven years is eligible to apply for registration as an elector in the constituency in which he or she lives. Applicants should be ordinarily resident in Hong Kong at the time of application. A registration exercise is conducted between April and June each year, although applications for registration can be made at any time of the year. The 1994 electoral roll carried 2,450,372 names, representing 61.8 per cent of an estimated potential electorate of 3.96 million. The 1995 provisional electoral roll carried 2,565,000 names, representing a registration rate of 64.8 per cent.

District Boards

Electoral system

317. There are 18 District Boards with 346 single-seat geographical constituencies. In the New Territories, the 27 Rural Committee chairmen are ex officio members of the respective District Boards. Elections to the District Boards is by simple majority. Electors may vote only in the constituencies in which they are registered. They may, however, stand for election to the District Board in any constituency, provided that they have been ordinarily resident in Hong Kong for the immediately preceding 10 years, that they have attained the age of 21 and that their nomination is supported by 10 electors in the constituency in question.

1994 District Board elections

318. On the basis of the new system described in paragraph 313, elections to the District Boards were held on 18 September 1994. A total of 757 candidates ran in the 346 single-seat constituencies. Of these, 50 constituencies were uncontested. Some 693,223 people (33.1 per cent of registered electors in the contested constituencies) turned out to vote. This was 270,000 more than the

turnout in 1991 (423,923): an increase of 64 per cent in absolute numbers. The elections marked the first time that 18 to 20 year-olds were eligible to vote; their turnout rate was 35 per cent. The elections passed smoothly.

319. After the election, five petitions questioning the results were presented to the High Court. One was from a candidate whose nomination was rules invalid by the Returning Officer on the ground that his nomination form was not subscribed by the requisite number of subscribers. The court dismissed this petition in December 1994. Another case concerned a candidate whose nomination was ruled invalid by the Returning Officer on the ground that he failed to satisfy the statutory requirement that a candidate must have ordinarily resided in Hong Kong for the 10 years immediately preceding his nomination. This case was heard by the High Court in January 1995. The court ruled that the candidate was ordinarily resident during the relevant period and should have been treated as qualified for nomination as a candidate. In consequence, a by-election was held in April 1995. The third case concerned a registered elector who was wrongly prevented by the polling staff from voting. The case was heard in January 1995. The court found in favour of the plaintiff and ruled that the winning candidate was not duly elected. (He had won by a margin of one vote.) Accordingly, a by-election was held on 5 March 1995. Two other cases concerned two elected members who allegedly swapped nomination papers without the prior consent of the subscribers. The hearing dates for these two cases have yet to be fixed.

Municipal Councils

320. The current Urban Council comprises 32 members returned by geographical constituencies and nine representative members (who are themselves District Board members) elected by the nine urban District Boards. The Regional Council comprises 27 members elected by geographical constituencies, and 9 representative members elected by the 9 New Territories District Boards. There are also three ex officio members, being the Chairman and the two vice-chairmen of the Heung Yee Kuk (the statutory body which represents the indigenous population of the New Territories).

321. As with the District Boards, election to the Municipal Councils is by simple majority. The qualifications for electors and for candidature are the same as for the District Boards.

1995 Municipal Council elections

322. On the basis of the new system described in paragraph 313, elections to the Municipal Councils were held on 5 March 1995. A total of 135 candidates ran in the 59 single-seat constituencies Seven of the constituencies were uncontested. In the remaining 52 constituencies, 560,000 electors turned out to vote. The overall turnout rate was 25.8 per cent, an improvement on the 23.1 per cent turnout for the previous elections in 1991. In terms of absolute numbers, the turnout surpassed all previous rounds of Municipal Council elections.

323. Following the elections, two candidates have lodged election petitions, challenging the results. Both claimed that the respective winning candidates were not duly elected by reason of having committed corrupt or illegal practices. The dates of hearing of the petitions have yet to be fixed.

The Legislative Council

324. The Legislative Council elected in September 1991 comprises nine double-seat geographical constituencies, returning a total of 18 members. Elections are by simple majority, and each elector can cast two votes.

325. In addition, there are 21 functional constituency seats, covering the following sectors: (i) commercial (two seats), (ii) industrial (two seats), (iii) finance and financial services (two seats), (iv) labour (two seats), (v) tourism, (vi) real estate and construction, (vii) social services, (viii) medical health care (two seats), (ix) teaching, (x) accountancy, (xi) legal (xii) engineering, architectural, surveying and planning (two seats), (xiii) Urban Council, (xiv) Regional Council, and (xv) rural. Voting is by the "preferential elimination system".

326. There are also 3 ex officio and 18 appointed seats. These, with the 39 elected seats, make up the 60 Legislative Council seats.

327. The electorate for Legislative Council geographical constituency elections comprises all electors on the General Electoral Roll. The electorate for functional constituency elections currently comprises either individual or corporate electors or a mixture of both.

328. From September 1995, all 60 Legislative Council seats will be elected: 20 by geographical and 30 by functional constituencies, 10 by an Election Committee constituency. The electorate for the nine new functional constituencies is broad based, encompassing the entire working population. The electorate for the 21 old functional constituencies has also been broadened, mainly through the abolition of corporate voting and its replacement by individual voting (see also para. 314 above).

329. Thus, elections to geographical constituencies are based on universal and equal suffrage. The functional constituency elections, with a more limited franchise, provide an additional channel for the representation of economic and professional sectors which are of importance in the community.

330. In July 1994, two members of the public initiated legal proceedings against the functional constituency system on the grounds that it was inconsistent with the BORO. Specifically, they argued that the system gave some electors two votes in Legislative Council elections (one geographical, one functional), whilst others had only one. In March 1995, the High Court dismissed the plaintiff's case, principally on the ground that the Letters Patent expressly permitted law to be made to limit the electorate of the functional constituencies and that the BORO did not fetter the supreme power of the Sovereign.

331. The qualifications for candidature in geographical constituency elections are the same for the District Boards and Municipal Councils. But candidates for functional constituency elections must additionally have substantial connections with the functional constituency in which they stand. In respect of the elections which are to be held in September 1995, each nomination for any of the nine new functional constituencies requires 50 subscribers who are electors in the relevant constituency. Nominations for the existing functional constituencies require 10 subscribers (with the exception of the two Municipal Council functional constituencies, which require only 5 subscribers, because of their small electorate). The number of subscribers required for nomination for geographical constituencies and the Election Committee constituency are 50 and 5 respectively.

Boundary and Election Commission

332. An independent and apolitical three-member Boundary and Election Commission was set up by statute in July 1993. It is responsible for reviewing the geographical constituency boundaries for the Legislative Council, the Municipal Councils and the District Boards, and making recommendations to the Governor. It is also responsible for the conduct and supervision of elections, including election procedures, the arrangements for voter registration, and ensuring that elections are conducted openly, honestly and fairly.

333. The Commission accomplished a number of major tasks during the period 1 January 1994 to 30 June 1995, including:

(a) Submitting its recommendations on the demarcation of the electoral boundaries for the 1995 Municipal Council elections and the Legislative Council elections. These recommendations were accepted by the Hong Kong Government;

(b) Staging a successful voter registration drive in 1994, resulting in the recruitment of 520,000 new electors. Over 100,000 of these were 18 to 20 year-olds, who became eligible for registration as electors for the first time in the history of Hong Kong;

(c) Staging another successful voter registration drive in the first half of 1995, with the following results:

229,000 more electors are registered for the geographical constituencies, resulting in a total electorate of 2,565,000 (a registration rate of 64.8 per cent);

Over 1,133,000 people are registered to vote in the 30 functional constituencies in the Legislative Council elections in September 1995. This compares with only 70,000 registered voters in the 21 functional constituencies in the 1991 Legislative Council elections;

1,050,800 are registered to vote in the nine new functional constituencies;

There are more voters in the 10 old functional constituencies representing professional sectors. The total number of registered electors in these constituencies had increased by 14.5 per cent from 63,000 to 72,102; and

There are more electors in the 11 old functional constituency seats where individual voters have replaced corporate voters. The total electorate has increased by 22.5 per cent from 8,325 to 10,195;

(d) Making subsidiary legislation to regulate voter registration and electoral procedures, and publishing comprehensive guidelines on election-related activities;

(e) Organizing and supervising the District Board and Municipal Council elections in September 1994 and March 1995 respectively; and

(f) Submitting reports to the Governor on each of these elections which, in the Commission's view, had been conducted fairly, openly and honestly.

Government advisory boards and committees

334. The network of government advisory boards and committees is a distinctive feature of the system of government in Hong Kong. Its purpose is to obtain, through consultation with interested groups in the community, the best possible advice on which to base decisions. Thus, advisory bodies of one kind or another are found in nearly all government departments and quasi-government bodies. There are over 300 of them, with a membership including both government officials and over 4,300 members of the public. Some individuals serve on more than one body. The bodies are either statutory (like the Board of Education) or non-statutory (like the Labour Advisory Committee). Apart from tendering advice to the Hong Kong Government, some, like the Housing Authority, also carry out executive functions.

335. Members are appointed for their specialist knowledge or expertise, or because of their contribution to - or interest in - community affairs. Increasing importance has been attached to the contribution of these bodies to the formulation and execution of government policies. Where appropriate, the Hong Kong Government broadens the cross-section of representation and encourages an inflow of new ideas through a reasonable turnover of membership.

Rural elections

336. The system of elections in the villages of the New Territories is described in paragraphs 42 to 44 above, under article 3 of the Covenant.

Access to the public service

337. Access to the public service is available on general terms of equality to all suitably qualified persons. The Hong Kong Government's localization policy gives preference to suitably qualified local candidates on first appointment. But suitably qualified overseas candidates may be recruited if

qualified local candidates are unavailable. The contracts of overseas officers on "overseas agreement" terms are not renewed if there are local officers ready to take over.

338. Article 21 (c) of the Bill of Rights requires that every permanent resident shall have the right and the opportunity, without any distinction on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and without unreasonable restrictions, to have access, on general terms of equality, to public service in Hong Kong. In the light of this requirement, the Hong Kong Government introduced an interim measure to allow "overseas agreement" officers who are permanent residents of Hong Kong to be offered another contract on "local" terms, but at one rank lower, if suitable local replacements are available.

339. This interim measure has been replaced by a longer-term arrangement. Overseas agreement officers who are permanent residents of Hong Kong will now be offered new contracts on "local" terms at their existing rank if they are the best persons for the jobs in competition with officers from a lower rank. The same arrangement applies to the renewal of the contracts of officers employed on "local" terms.

340. Certain arrangements governing "overseas agreement" officers are under legal challenge by the Association of Expatriate Civil Servants of Hong Kong. The Hong Kong Government believes that the arrangements are compatible with the relevant provisions in the BORO and will defend them in court.

Article 26

341. The right to equality and non-discrimination under article 26 of the Covenant is implemented in Hong Kong through article 22 of the Bill of Rights, as well as through other legislation and through administrative policies. Differential treatment between different groups or individuals is only permitted where the means employed is proportionate to a legitimate aim. For example, a person is disqualified from voting or being nominated as a candidate if he is the subject of a decision under the Mental Health Ordinance that he is of unsound mind and incapable of managing himself and his affairs. In some cases, special measures are taken to protect the vulnerable groups or individuals. Details of steps taken to achieve equality and non-discrimination are set out below.

Education and training

342. The Hong Kong Government is fully committed to providing nine years of free and compulsory education to all children, irrespective of their degree of disability. Children with a disability have the same rights as other children to receive education in accordance with the provisions of the Education Ordinance.

343. Disabled children are encouraged to receive education in ordinary schools as far as possible. To facilitate their integration into mainstream education, the Education Department provides supportive educational services

to 16,126 children receiving education in ordinary schools through remedial teaching, peripatetic advisory services and counselling; 63 special schools cater for children who are unable to benefit from mainstream education even with additional support. Currently, there are nearly 7,400 pupils in this category.

Employment

344. Disabled people have the same rights to work as do all members of the community. Government policy is to take a lead in the employment of people with a disability, who are considered for civil service jobs on equal terms with other applicants. Legislation covering such matters as conditions of employment, employees' compensation, safety and health, and non-protection of wages apply to all employees on a non-discriminatory basis.

Access and transport

345. Access and transport remain problems for disabled people with mobility difficulties. However, good progress has been made in these important areas in recent years. The Hong Kong Government has regular discussions with public transport operators and disabled people in order to find ways of improving access to public transport.

346. Regulations under the Building Ordinance prescribe accessibility requirements for certain types of private buildings and are supplemented by a design manual, specifying technical standards. By administrative arrangement, public buildings are also designed to similar standards. As part of its programme to introduce disability discrimination legislation, the Hong Kong Government has examined the statutory provisions for access for disabled persons. It has decided that, as a general rule, access requirements should apply to all types of buildings. Sensory, as well as locomotory, disabilities should also be catered for. The Building Ordinance and the design manual will be reviewed in this light.

Social security and social welfare services

347. Social security benefits are available to everyone, disabled or not, who meet the eligibility criteria. Special allowances - the "Normal Disability Allowance" and the "Higher Disability Allowance" - are given to disabled persons who meet the relevant criteria. Social welfare services are provided by the Government and by non-governmental organizations to those who need them, disabled or not.

348. A few groups have objected to the establishment of rehabilitation facilities in their neighbourhood. Their objections arise from inadequate understanding or prejudice. The Hong Kong Government has strengthened - and will continue to strengthen - public education on rehabilitation to promote community acceptance of, and reduce prejudice against, disabled people. About HK$ 34 million will be spent on such education between 1993-1994 and 1996-1997.

Legislation to prohibit discrimination on the ground of disability

349. To demonstrate its commitment to integrating disabled persons into the community, the Hong Kong Government introduced the Disability Discrimination Bill into the Legislative Council in May 1995. The Hong Kong Government hopes that it will pass into law in July. This will give disabled persons the legal weapons with which to fight for equal opportunities, and to fight against discrimination, harassment and vilification. The term "disability" in the Bill is defined as widely as possible so as to give maximum opportunity for persons with disabilities to seek redress. The Bill also covers persons with HIV/AIDS.

350. The Bill contains provisions on harassment or vilification. It also covers discrimination on the ground of disability in areas such as:

Work (by employers, professional and trade organizations, and employment agencies);

Membership of partnerships, professional organizations, qualifying bodies and clubs;

Education (by educational institutions in terms of admission and treatment of students);

Access to and use of buildings, places, vehicles and services;

Accommodation (by landlords or agents in dealing with a person's application for commercial or residential premises); and

Recreation and sport.

Legal representation and protection

351. Disabled persons have the same rights as all other members of the community to seek protection or assistance from the law. Mentally handicapped persons are specially protected from sexual abuse under the Crimes Ordinance and the Mental Health Ordinance. The mentally ill receive similar protection under the Mental Health Ordinance. Under the Rules of the Supreme Court (Cap. 4, Subsidiary legislation) legal representation in civil proceedings may be provided by the Official Solicitor (established under the Official Solicitor Ordinance 1991) or some other suitable guardian ad litem.

352. In October 1993, a judiciary working group examined the question of mentally handicapped persons giving evidence in court. It sought to devise immediate and practical solutions to reduce the possible trauma that mentally handicapped persons may undergo when giving evidence in criminal trials. It made 17 recommendations, including the use of Cantonese in court proceedings; special procedures at the trial (such as conducting it in a setting similar to a juvenile court); giving evidence by means of a closed circuit television link; and the use of video recording as evidence in chief. Most of the recommendations can be implemented administratively. Others have entailed amending legislation, specifically in respect of the Criminal Procedure Ordinance and the Evidence Ordinance, as discussed in paragraph 188 above

under article 14 of the Covenant. The judiciary is consulting the legal professions and government departments on a pilot scheme to implement some of the recommendations not requiring legislation. It is taking steps to ensure that the closed circuit television link and other facilities are ready for use in the courts by September 1995.

Comprehensive legislation against discrimination

353. There have been calls from human rights groups and others for comprehensive anti-discrimination legislation. A private members' bill on equal opportunities was introduced into the Legislative Council in July 1994. It sought to make it unlawful for public authorities and private persons to discriminate against persons on various grounds, including sex, sexuality, family status, disability, race, trade union membership, etc.

354. The Hong Kong Government fully supports the principle of equal opportunities for all. The BORO prohibits discrimination based on race, colour, sex, language, religious, political or other opinion, national or social origin, property, birth or other status. However, as explained in paragraph 4 above, the BORO does not provide protection against infringements by individuals of the rights of other individuals. The Hong Kong Government has therefore introduced legislation to prohibit discrimination on grounds of sex (see paras. 31 et seq. above) and disability. It does not propose legislation covering other areas at this stage because anti-discrimination legislation is a relatively new area of law in Hong Kong. Its social, economic and legal implications are not yet fully appreciated in the community. The Hong Kong Government therefore proposes a step-by-step approach, concentrating first on areas where there is a clear need for action. The next step will be to study the extent of discrimination based on sexual preference, family status and age. The aim of the study will be to determine whether action is needed in these areas and, if so, the best way forward.

Inheritance of land and property in the New Territories

355. Sections 13 and 17 of the New Territories Ordinance used to provide that - except for those lots for which exemption had been expressly sought and granted - New Territories land under individual ownership was inherited according to the Chinese customary law of succession. In practice, that entailed succession along the male line. The surviving widows and daughters of the deceased were maintained by the male successors as part of this tradition.

356. The New Territories Land (Exemption) Ordinance was enacted on 24 June 1994 to remove this inhibition against women inheriting land and real estate in the New Territories. Its effect was to exempt non-rural land in the New Territories (retrospectively from the date of the relevant land grant) from the application of the New Territories Ordinance. It had similar implications for inheritance of rural land, except that the effect was not retrospective. Thus Chinese customary succession law no longer applies to these lands. The right of women to succeed to land and real estate in the New Territories is now the same as that of their counterparts in the urban areas.

New Territories small house policy

357. The New Territories small house policy was introduced in the early 1970s to address problems with the standard of rural housing and genuine concerns on the part of the New Territories indigenous community that increasing urbanization would lead to their village lifestyle being swamped or marginalized. Those concerns remain valid today.

358. The policy enables male indigenous villagers to apply for a licence to build a small house on their own agricultural land. Alternatively, they may apply for the grant, at a concessionary premium, of a site on government land for the same purpose. In both cases, the villagers pay for the construction themselves. Villagers wishing to sell houses built on government land must pay the balance of the full market value premium. The restriction to male indigenous villagers reflects the traditions and customs of the indigenous communities, where heads of households were traditionally male and women moved away from their villages upon marriage.

359. The policy - which predates the Sex Discrimination Ordinance (see paras. 31 et seq. above) - is nevertheless being reviewed to take account of present day circumstances. Prior to the completion of that review, the Hong Kong Government has found it necessary to provide in the Sex Discrimination Ordinance an exception in respect of the policy.

Brewin Trust Fund (Amendment) Ordinance 1994

360. The Brewin Trust Fund Ordinance established a charitable trust, whose beneficiaries were restricted to widows, orphans and workmen of Chinese race. Those limitations constituted discrimination and were removed in April 1994.

Migrant workers and foreign domestic helpers (FDH)

361. Migrant workers and FDH enjoy the same rights and benefits under labour legislation as do local workers. The Employment Ordinance, which is the principal ordinance governing terms and conditions of employment, applies to all employees in Hong Kong. The Employees' Compensation Ordinance provides that employees receiving injuries arising from and in the course of employment are entitled to claim compensation of up to HK$ 1.44 million for permanent total incapacity or HK$ 1.26 million for death. If their employers become insolvent, migrant workers, like their local counterparts, may apply for ex gratia payments (covering wages, wages in lieu of notice and severance payment) from the Protection of Wages on Insolvency Fund.

362. Migrant workers can make use of the services provided by government departments. In particular, the Labour Department provides a conciliation service to help resolve disputes relating to wage claims. If the matter cannot be resolved through conciliation, workers can take their claims to the Minor Employment Claims Adjudication Board or the Labour Tribunal.

363. Migrant workers are informed of their rights and benefits under the law through pamphlets, briefing sessions and an enquiry service. A 24-hour hotline for complaints is also available free of charge.

364. There are currently about 130,000 FDH in Hong Kong, of whom 90 per cent comes from the Philippines. They have made significant contributions both to individual families and also to the economy. To provide recreation facilities during their days of leave, the Hong Kong Government is taking the initiative to make available a number of venues for FDH to run activity centres. The Hong Kong Bayanihan Trust, a non-profit making organization, formed mainly by Filipino business executives, is responsible for financing the scheme and operating and managing the centres.

365. FDHs are admitted into Hong Kong to work for specific employers under a standard two-year contract of employment. When their contracts end, they may enter into new contracts with the same or new employers. But they must first take home leave before returning to Hong Kong to start the new contract.

366. If their contracts are terminated prematurely by either employers or FDH, the FDH are permitted to stay for two weeks or for the remainder of the 12-month period endorsed in their passports, whichever is the shorter. This is known as the "two-week rule". Since employers must pay for their FDH's homeward passage, the two weeks gives the FDH sufficient time to make arrangements to leave Hong Kong. Thereafter, any new applications for domestic work in Hong Kong must be submitted from the FDH's country of origin.

367. The FDH must work only for the employers specified in their employment contracts and must perform only the work of domestic helpers. Permission to change employment in Hong Kong after a contract has been prematurely terminated may be given in exceptional circumstances, such as the death, emigration or financial difficulties of the employer, or physical abuse by the employer.

368. Foreign domestic helpers, like all non-permanent residents, are eligible for registration as electors provided that they fulfil certain statutory requirements. They must be at least 18 years old, have not fallen foul of any of the statutory disqualification criteria (for example, past conviction or mental illness), and have ordinarily resided in Hong Kong for the seven years immediately preceding the date of application for registration.

Article 27

Official languages

369. The official languages of Hong Kong are English and Chinese. The Official Languages Ordinance states that both languages can be used for communication with the Government. Chinese is widely used by government departments when corresponding with members of the public. Major government reports and publication of public interest are now available in both languages. In addition, simultaneous interpretation services using English and Cantonese, a Guangdong dialect spoken by the majority of the local Chinese community, are provided at meetings of the Legislative Council, the Municipal Councils, District Boards, and other government boards and committees. The Bilingual Laws Advisory Committee Languages Ordinance - advises the Governor-in-Council on the authenticity of the Chinese translation of existing ordinances which were enacted only in English. Since April 1989, all new

principal ordinances and legislation amending bilingual ordinances, and most subsidiary legislation, have been enacted in both English and Chinese, and both texts are equally authentic.

Translation of ordinances

370. At the end of June 1995, over 350 of the 525 ordinances originally enacted in English only (including subsidiary legislation and recent amendments) had working, or further advanced, Chinese drafts. Of these, 225 had been examined by the Bilingual Laws Advisory Committee. These 225 mainly related to issues of interest to most members of the public (such as employment, marriage and landlord and tenant) or were those most frequently used in lower courts. To date, Chinese texts of 109 ordinances and the list of short titles have been declared authentic.

Ethnic minorities

371. The Basic Law provides that ethnic minorities will enjoy the same human rights protection after 1997 as all other persons in the territory.

Article 40

Submission of reports after 1997

372. The Sino-British Joint Declaration (see paras. 20-21 of section A (General profile)) is an international agreement between the United Kingdom and the People's Republic of China, registered with the United Nations Secretariat under Article 102 of the Charter. The fourth paragraph of section XIII of annex 1 to the Joint Declaration (JD156) provides expressly that "the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied in Hong Kong shall remain in force" after the transfer of sovereignty. This obligation is also clearly set out in article 39 of the Basic Law, which again provides expressly that the provisions of the International Covenants "shall remain in force in Hong Kong and shall be implemented through the laws of the Hong Kong Special Administrative Region". The Basic Law, which will enter into force on 1 July 1997, is a Chinese law that gives effect to the obligations of the Chinese Government under the Joint Declaration.

373. The United Kingdom Government has fully briefed the Chinese Government on the ways in which the Covenants are now applied in Hong Kong. One of the key provisions is the obligation of the United Kingdom, as the sovereign power, to report on Hong Kong to the relevant treaty monitoring bodies. The United Kingdom Government has made clear its view that, to meet JD156, the future sovereign power will have to continue to fulfil this reporting obligation.

374. The United Kingdom Government has made known to the Chinese Government its views as to how the latter may fulfil its obligations under JD156. The United Kingdom Government will continue to work for a satisfactory resolution of this important question with the Chinese Government.

List of appendices 4/

1. Hong Kong Bill of Rights (8 June 1991).

2. The Hong Kong Letters of Patent 1991 (No. 2) (20 May 1991).

3. Civic education in Hong Kong, the Hong Kong Committee on the Promotion of Civic Education, set up in May 1986.

4. Legislative provisions amended in the light of the Hong Kong Bill of Rights Ordinance (BORO).

5. List of human rights training for government officers.

6. Attendance by the judiciary at human rights seminars.

7. Conclusions and recommendations of the Independent Commission Against Corruption Review Committee.

Notes

1/ Paragraph 2 of annex III to the Joint Declaration provides that, after 1997, where certain types of rural properties are held by descendants or lawful successors in the male line of persons who were, in 1898, residents of established villages in Hong Kong, the rent payable to the Government will not change. Other types of holding will be subject to an annual rent to be adjusted in step with changes in the rateable value of the property.

2/ The Cantonese word "Kaifong" literally means people living in a particular street. In common usage it refers to people living in the same neighbourhood.

3/ In 1991, a Vietnamese migrant was murdered in the Whitehead Detention Centre. Another inmate was committed to trial for the crime. But witnesses refused to testify for fear of reprisals and the case was dismissed. The Hong Kong Government commissioned Justice Kempster to conduct a commission of inquiry. He submitted his report and recommendations in 1993.

4/ Available for consultation in the secretariat.